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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1955

No. 227

UNITED MINE WORKERS OF AMERICA, ET AL.,
PETITIONERS,

v.

ARKANSAS OAK FLOORING COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

PETITION FOR CERTIORARI FILED JULY 12, 1955

CERTIORARI GRANTED OCTOBER 17, 1955

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 227

UNITED MINE WORKERS OF AMERICA, ET AL.,
PETITIONERS,

vs.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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[fol. 1]

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

City of Alexandria, Friday, March 12, 1954.

The District Court, civil section, met this day according to law, His Honor Judge Allen V. Hundley presiding. Previous minutes were read and approved.

* * * * * * *

MINUTE ENTRIES

43,739—Arkansas Oak Flooring Company vs. United Mine Workers of America, et al.: This cause coming on this day on rule, pursuant to assignment, was called. Exception to citation filed. Exceptions to jurisdiction and vagueness filed. Answer to rule filed. James Ledbetter sworn and testimony adduced. Exception to the citation argued, submitted and over-ruled by the Court. Exception to the jurisdiction argued. Mr. J. G. Smith sworn and testimony adduced. By agreement of counsel, case continued to Monday, March 15, 1954, at 10:00 A.M. Counsel for plaintiff moved the Court to continue in effect the temporary restraining order heretofore granted. Counsel for defendant objected. Objection over ruled by the Court. Motion granted, and the temporary restraining order is to remain in full force and effect thru Monday, March 15th, 1954, or until appropriate action is taken. The Court finds as reasons for renewing restraining order that the same condition exists as existed when the order was granted and that the preliminary injunction could not be heard and passed upon within the original 10 day period.

* * * * * * *

Court then adjourned according to law.

Approved: Allen V. Hundley, Judge.

[fol. 2] Monday, March 15, 1954.

The District Court, civil section, met this day according to law, His Honor Judge Allen V. Hundley presiding. Previous minutes were read and approved.

* * * * * * *

43,739—Arkansas Oak Flooring Company vs. United Mine Workers of America, et al.: This cause coming over from Friday, March 12, 1954, was called. Testimony and evidence adduced. Exceptions to the Jurisdiction and vagueness argued, submitted and over ruled by the Court. Rule taken up and tried. Testimony and evidence adduced. Rule argued, submitted and judgment rendered making the rule absolute as prayed for.

* * * * * * *

Court then adjourned according to law.

Approved: Allen V. Hundley, Judge.

STATE OF LOUISIANA,
Parish of Rapides:

City of Alexandria,
Thursday, March 25, 1954.

The District Court, civil section, met this day according to law, His Honor Judge Allen V. Hundley presiding. Previous minutes were read and approved.

* * * * * * *

43,739—Arkansas Oak Flooring Company vs. United Mine Workers of America. Judgment read and signed. see decree. Written motion on counsel for defendants filed praying for a devolutive appeal. Motion for devolutive appeal granted, returnable to the Honorable Supreme Court of Louisiana, New Orleans, Louisiana, on or before April 16th, 1954, devolutive appeal bond fixed in the sum of $500.00. Case set for trial for June 24, 1954.

Court then adjourned according to law.

Approved: Allen V. Hundley, Judge.

[fol. 3] In the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana

Petition of Arkansas Oak Flooring Company Filed March 2, 1954

To the Honorable, the Judges of the Ninth Judicial District Court, Holding Sessions in and for Rapides Parish, Louisiana:

The petition of Arkansas Oak Flooring Company, a Delaware corporation, authorized to do business in Louisiana; and having its registered office in Rapides Parish, Louisiana; with respect, represents:

1

That United Mine Workers of America, defendant herein, is an unincorporated labor organization, or voluntary association, and should be served herein through James Ledbetter, the only one of its members or officers who is present in Louisiana, or within the jurisdiction of this court.

2

That the other defendants herein are Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, all of whom are residents of Rapides Parish, Louisiana, and James Ledbetter, a non-resident who is temporarily residing in Rapides Parish, Louisiana.

3

Petitioner shows that it is engaged in the business of manufacturing lumber and oak flooring in Rapides Parish, La., where it operates a large sawmill and flooring plant near the City of Alexandria, Louisiana.

4

Petitioner shows that despite the fact that it is not engaged in any labor dispute with its employees, nor with any labor union, the defendant, United Mine Workers of America, along with the other defendants named herein,

did, on March 1, 1954, set up a picket line surrounding petitioner's establishment herein referred to, which picket line is still maintained.

[fol. 4]

5

That such picket line has caused a large number of its employees to refuse to cross the same and report for work, with the result that petitioner's operations have been greatly curtailed, to petitioner's irreparable loss and damage.

6

Petitioner shows that it has no dispute of any kind with respect to the employment, wages, hours, or other working conditions, of any of its employees.

7

That the defendants herein, acting singly and in concert, have, by threats of violence and intimidation, frightened a number of its employees away from their jobs, thereby unlawfully interfering with petitioner's business.

8

In the alternative, and should it be found that petitioner is engaged in a labor dispute with the defendant union, which is denied, then it would be unable to recognize it as a bargaining agent of its employees because the National Labor Relations Board has refused to recognize said defendant union as a qualified labor organization because of the failure of its officers to disavow communist affiliation, as required by the National Labor Relations Act; that picketing, peaceful or otherwise, by such noncomplying union, is an unlawful interference with petitioner's business.

9

Plaintiff avers upon information that the United Mine Workers of America does not represent its employees.

10

Petitioner shows that the picketing presently engaged in by the defendant union has for its unlawful purpose the

[fol. 5] forcing of petitioner to interfere with the rights of its employees as expressed by the legislature of Louisiana, by requiring petitioner to deal with the defendant union as a representative of its employees in the absence of their selection of said union as their representative.

11

That the unlawful action of the defendants herein is causing petitioner a monetary loss in excess of $1000.00 per day, which will continue indefinitely unless such unlawful picketing is enjoined; that such damages are irreparable in that it cannot recover said sum from any defendant or other person; that none of them could be made to pay any judgment in damages.

12

Petitioner has no adequate administrative remedy for its protection and no adequate legal remedy at law.

13

That under the circumstances herein set forth petitioner is entitled to the immediate issuance of a temporary restraining order, without notice or hearing, in order to prevent further irreparable injury, loss and damage to petitioner.

14

That in due course a preliminary injunction and, finally, a permanent injunction should issue against the defendants herein, enjoining them from the unlawful picketing and other interference with petitioner's employees.

Wherefore, petitioner prays that on the basis of its petition and annexed affidavits, a temporary restraining order issue herein, upon petitioner furnishing bond as fixed by the court, restraining, prohibiting and enjoining the United Mine Workers of America, its officers, members and employees, and the other defendants herein, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, [fol. 6] Will Cobb and John Doggins, and James Ledbetter, and any and all other persons acting for or on behalf of said defendants, from picketing on, near or about

petitioner's property, or approaches thereto just off Texas Avenue near Alexandria, Louisiana; and likewise restraining said defendants and parties acting for or in concert with them, from violence or threats thereof to induce petitioner's employees to cease their employment relationship with petitioner.

That a rule issue against the defendants, ordering them to show cause why a preliminary injunction should not issue herein, and finally, after due hearing hereof, that a permanent injunction issue herein.

For all costs and for general relief.

Stafford & Pitts, Attorneys for Petitioner.

[fol. 7] [Title omitted]

AFFIDAVIT OF J. G. SMITH AND S. C. GRIFFITH

STATE OF LOUISIANA,
Parish of Rapides, ss:

Before me, the undersigned authority, personally came and appeared J. G. Smith, a resident of Pine Bluff, Arkansas, and S. C. Griffith, a resident of Alexandria, Louisiana, who being sworn, deposed and said:

That they are the President and General Manager, respectively, of the Arkansas Oak Flooring Company, plaintiff herein; that on March 1, 1954, the United Mine Workers of America, acting through its agent, James Ledbetter, and through others, along with Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, have stationed a picket line around the said Arkansas Oak Flooring Company's plant near Alexandria, La., the effect of which was to cause a large number of plaintiff's employees to fail to report to work, thereby greatly curtailing plaintiff's manufacturing operations and causing it a monetary loss of more than $1000.00 per day, which damage is irreparable because of the insolvency or lack of means of the defendants.

That said picket line was set up despite the fact that

plaintiff is not engaged in any labor dispute with any union nor with its employees over wages, hours, working conditions or any other cause; that the defendants herein have, by threats of violence and intimidation, frightened a number of its employees away from their jobs.

[fol. 8] That petitioner has not been requested to recognize nor to negotiate with the defendant union, and that it would be unable to do so even if requested, for the reason that the officers of said union have failed to disavow communist affiliation and that said union has not been recognized as a qualified union by the National Labor Relations Board.

That plaintiff has no adequate administrative or legal remedy to prevent the irreparable loss and damage being caused by such illegal acts of the defendants, and that a temporary restraining order is necessary to prevent such irreparable loss and damage.

That affiants have read the above and foregoing petition and that all the allegations therein contained are true and correct, except such as are on information and belief, and that as to them affiants verily believe them to be true.

J. G. Smith, S. G. Griffith.

Sworn to and subscribed before me, this 2nd day of March, A. D. 1954. Jean Pharis, Notary Public.

[fol. 9] In the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana

Temporary Restraining Order—March 2, 1954

The foregoing petition and annexed affidavit considered, and it appearing from the facts shown therein that before notice can be served and a hearing had on the plaintiff's application for a restraining order and injunction it has and will continue to suffer immediate and irreparable loss and damage, and it appearing that the granting of a temporary restraining order will occasion no damage to defendants.

It is ordered, adjudged and decreed that upon plaintiff furnishing bond with good and solvent surety as required

by law, in the sum of $5,000.00, the defendants, United Mine Workers of America, its officers, members, agents and employees, James Ledbetter, and Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, and all other persons acting for the said defendants, be and they are hereby restrained, prohibited and enjoined from picketing on, about or near the property of plaintiff, known as the Arkansas Oak Flooring Company plant; or the approaches thereto, and from interfering in any manner with the operation of the plaintiff's business by picketing or threatening its employees in an effort to induce them to discontinue their employment with plaintiff.

This temporary restraining order shall expire at the end of ten days from the date hereof unless extended.

It is further ordered that the said defendants show cause in open court at Alexandria, La., on the 12th day of March, 1954 at ten o'clock a.m., why a preliminary injunction in the sum and substance of this restraining order should not issue as prayed for.

It is further ordered that copies of this order, with copies of the plaintiff's petition, be served upon the de-
[fols. 10-11] fendants and upon all persons engaged in the picketing activities enjoined hereunder.

Done and signed at Alexandria, La., on this 2nd day of March, 1954, at 2:00 o'clock P.M.

Allen V. Hundley, Judge.

[fol. 12] [File endorsement omitted]

IN NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

EXCEPTION TO CITATION—Filed March 12, 1954

To the Honorable the Judges of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana:

Now into Court, through undersigned counsel, comes the United Mine Workers of America, in so far as capable

of doing so, and excepts to the citation herein, as far as it pertains to the United Mine Workers of America, for this, to-wit:

1. That, as shown by paragraph 1 of the petition, this said defendant "is an unincorporated labor organization of voluntary association" and, therefore, has no corporate existence and cannot be impleaded into Court under its group name.

2. That James Ledbetter, upon whom process was served, as the "only one of its members or officers who is present in Louisiana" is not authorized to receive process or citation for the members of said group or stand in judgment for the United Mine Workers of America.

3. That the Court lacks jurisdiction ratione personae of the United Mine Workers of America.

[fol. 13] Wherefore, the United Mine Workers of America pray that this exception be sustained, and as to it, this citation be quashed and that defendant's suit be dismissed and exceptor prays for all costs and for all general and equitable relief.

(S) James I. McCain, Attorney for Exceptor.

Certificate of service (omitted in printing).

[fol. 14] [File endorsement omitted]

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

EXCEPTION TO THE JURISDICTION—Filed March 12, 1954

To the Honorable the Judges of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana:

Now into this Honorable Court, through undersigned counsel, come all parties made defendant in the above and foregoing matter, except for the purpose of excepting to

the petition herein, based on the following reasons, to-wit:

That the Court has no jurisdiction ratione materiae in this matter because:

1. That under the law of the State of Louisiana the Court has no jurisdiction to issue a preliminary or permanent injunction in the labor dispute alleged in the petition.

2. That the petition alleges an unfair labor practice, growing out of a labor dispute in the field of interstate commerce, which is in the exclusive jurisdiction of the National Labor Relations Board, as provided by the Labor Management Relations Act, Section 160(a).

[fol. 15] Wherefore, defendants pray that this exception be maintained and this suit be dismissed at costs of the plaintiff.

(S.) James I. McCain, Attorney for Exceptors.

Certificate of service (omitted in printing).

[fol. 16] [File endorsement omitted]

IN NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

EXCEPTION OF VAGUENESS—Filed March 12, 1954

To the Honorable the Judges of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana:

Now into Court, through undersigned counsel, come all parties made defendant in the above and foregoing matter, except ——, for the purpose of excepting to the petition filed herein upon the following basis, to-wit:

That the said petition is fatally vague and uncertain in that the petitioner alleges, as the basis for injunctive relief "that the defendants herein, acting singly and in concert,

have, by threats of violence and intimidation, frightened a number of employees away from their jobs."

That the defendants are entitled to be informed as to who made any threats and to whom the threats were made and when and where the threats were made, and the nature of the alleged threats.

That, in order to properly defend in this matter, the defendants are entitled to this information; otherwise, the defendants will be entirely "in the dark" as to what peti-
[fol. 17] tioner intends to prove in this matter.

Wherefore, exceptors pray that this exception be maintained and that, as to them, this suit be dismissed, and for all general and equitable relief.

(S.) James I. McCain, Attorney for Exceptors.

Certificate of service (omitted in printing).

[fol. 18] [File endorsement omitted]

IN NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

No. 43739

RETURN TO RULE TO SHOW CAUSE—Filed March 12, 1954

To the Honorable the Judges of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana:

Now into Court, through undersigned counsel, come all parties made defendant in the petition in the above and following matter, except and for to answer and make return to the petition and rule for a preliminary injunction, and reserving all rights under the exceptions previously filed herein, respectfully aver:

Defendants admit the introductory paragraph of the petition.

1. Defendants admit that the United Mine Workers of America is an unincorporated labor organization, but deny

that James Ledbetter is its agent or representative for process or legal service and deny that said voluntary association is within the jurisdiction of this Court.

2. Defendants admit the allegations of paragraph 2 of the petition, but deny that James Ledbetter is temporarily residing in Rapides Parish, Louisiana.

3. Admitted.

[fol. 19] 4. Defendants deny the allegations of paragraph 4 of the petition, except as hereinafter admitted.

5. Defendants deny paragraph 5 of the petition, except as hereinafter admitted.

6. Denied.

7. Denied.

8. The allegations of paragraph 8 of the petition are denied except that defendants admit and aver that there is a bona fide labor dispute existing between the petitioner as employer and the defendants as employees.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

And further answering defendants aver:

15

(a) That there is a bona fide labor dispute between the petitioner as employer and all defendants and other employees of petitioner.

(b) That 182 of petitioner's employees, or approximately 80 percent of said employees have designated District 50, United Mine Workers of America, a separate unincorporated labor organization as its bargaining agent at petitioner's plant.

(c) That petitioner, through its officers, has been so informed and defendants and other employes of petitioner have sought to have said labor organization recognized as the bargaining agent for said employees, and defendants and other of said employees have sought to negotiate with the employer on working conditions and terms, through

said representative, and said petitioner has arbitrary refused to negotiate or meet with its employees.

[fol. 20] (d) That a picket line was set up near petitioner's plant on March 1, 1954 by a large majority of the employees of petitioner's plant when the petitioner arbitrarily refused to negotiate or discuss working conditions with its employees, or recognize the employees bargaining agent.

(e) That said picket line at no time consisted of more than three pickets; that it was peaceful; that there was no threats or violence to anyone at any time in connection with this matter.

16

Defendants further aver also or in the alternative, that this matter involves an unfair labor practice, growing out of a labor dispute in the field of interstate commerce and within the exclusive jurisdiction of the National Labor Relations Board.

17

Defendants aver that the right to strike and picket peacefully, as conducted herein by defendants and other employees of the petitioner, (as an expression of free discussion) is protected by the First and Fourteenth Amendments to the Constitution of the United States and Article I, Section 3 of the Constitution of Louisiana.

Wherefore, defendants pray for judgment in their favor denying a preliminary injunction or denying any relief to the petitioner, and that petitioner's suit be discussed at its cost and for all general and equitable relief and all costs.

(S.) James I. McCain, Attorney for defendants,
818 Whitney Bldg., New Orleans, La.

[fols. 21-22] *Duly sworn to by James I. McCain. Jurat omitted in printing.*

[fols. 23-24] [File endorsement omitted]

PLAINTIFF'S EXHIBIT I—Filed March 15, 1954

NATIONAL LABOR RELATIONS BOARD
Fifteenth Region
820 Lowich Bldg., 2026 St. Charles Ave.
New Orleans 13, Louisiana

March 8, 1954.

Mr. John L. Pitts,
Stafford & Pitts,
Suite 710 Guaranty Bank Building,
Alexandria, Louisiana.

Dear Mr. Pitts:

Re: Arkansas Oak Flooring Company, Alexandria, Louisiana (Unlocketed).

This is in answer to your letter of March 4, 1954, regarding the above company, in which you request information as to compliance by the United Mine Workers of America with the filing requirements of the Labor Management Relations Act, commonly referred to as the Taft-Hartley law. This is to advise that the United Mine Workers of America has not complied with the filing requirements of Sections 9 (f) (g) and (g) of the Act and therefore may not use the services of the Board for either representation or unfair labor practice matters. For your convenience, I am enclosing a copy of the Board's Rules and Regulations and a copy of the Act.

Very truly yours, (S.) John F. LeBus, Regional Director.

Enclosure

[fol. 25] DEFENDANT'S EXHIBIT "D-1"

Membership Application Blank Not Dated, Filed in Evidence March 15, 1954

MEMBERSHIP APPLICATION AND CHECKOFF AUTHORIZATION
DISTRICT 50, UNITED MINE WORKERS OF AMERICA

I hereby request and accept membership in District 50, United Mine Workers of America, and authorize it to represent me in my behalf to negotiate and execute any and all agreements pertaining to wages, hours, and conditions of work. This power to act in my behalf expressly revokes and shall supersede all previous authorizations which I may have given to any other person or organization for the purpose of representing me as an employee. The Constitution, Laws, Rules, Policies, Regulations and Edicts of the above Union and all amendments thereto shall be binding upon me. In consideration for services rendered and to be rendered by the above Union, I agree to pay all reasonable amounts of money lawfully required as a condition to obtain and maintain membership in good standing.

My employer, therefore, is hereby authorized to deduct from my wages and turn over to the officer or representative, as designated in the applicable agreement, all such amounts of money above outlined and limited to the amounts provided in the applicable agreement between the above Union and my employer, and this authorization and assignment shall be irrevocable for the term of the applicable contract between the Union and the Company or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is the lesser, until I give written notice to the Company and the Union at least 60 days and not more than —— days before any periodic renewal date of this authorization and assignment of my desire to revoke the same.

[fols. 26-86] DEFENDANTS' EXHIBIT "D-2"

Signed Membership Application Forms, entire group marked "D-2", Not Dated, Filed in evidence March 15, 1954.

MEMBERSHIP APPLICATION AND CHECKOFF AUTHORIZATION
DISTRICT 50, UNITED MINE WORKERS OF AMERICA

I hereby request and accept membership in District 50, United Mine Workers of America, and authorize it to represent me in my behalf to negotiate and execute any and all agreements pertaining to wages, hours, and conditions of work. This power to act in my behalf expressly revokes and shall supersede all previous authorization which I may have given to any other person or organization for the purpose of representing me as an employee. The Constitution, Laws, Rules, Policies, Regulations and Edicts of the above Union and all amendments thereto shall be binding upon me. In consideration for services rendered and to be rendered by the above Union, I agree to pay all reasonable amounts of money lawfully required as a condition to obtain and maintain membership in good standing.

My employer, therefore, is hereby authorized to deduct from my wages and turn over to the officer or representative, as designated in the applicable agreement, all such amounts of money above outlined and limited to the amounts provided in the applicable agreement between the above Union and my employer, and this authorization and assignment shall be irrevocable for the term of the applicable contract between the Union and the Company or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is the lesser, until I give written notice to the Company and the Union at least 60 days and not more than days before any periodic renewal date of this authorization and assignment of my desire to revoke the same.

Signature—JOSEPH STEWART Clock No.
Address—Fenner Street 1208
Employed by
Social Security No. Date

The parties herewith agree and stipulate that counsel for the petitioners introduced in evidence, in addition to the blank card and the card signed by Joseph Stewart, one hundred and seventy-eight additional cards of the same sort signed in each instance by one employee of the respondent.

[fol. 87] [File endorsement omitted]

IN NINTH JUDICIAL DISTRICT COURT, PARISH OF RAPIDES, STATE OF LOUISIANA

No. 43,739

ARKANSAS OAK FLOORING COMPANY

vs.

UNITED MINE WORKERS OF AMERICA, et al.

JUDGMENT ON PRELIMINARY INJUNCTION—March 25, 1954

This cause having come on for trial on the rule for a preliminary injunction, and trial being regularly had, and the court being of the opinion that the plaintiff is entitled to the relief prayed for, because, among other things, it will suffer irreparable loss and damage unless a preliminary injunction is granted, for other reasons orally assigned.

It is therefore, Ordered, Adjudged and Decreed that a preliminary injunction issue herein enjoining and prohibiting the United Mine Workers of America, its officers, members and employees, and the other defendants herein, James Ledbetter, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, and any and all other persons acting for or on behalf of said defendants, from picketing on, near or about plaintiff's property or approaches thereto just off Texas Avenue in the City of Alexandria, Rapides Parish, Louisiana; said preliminary injunction to issue upon the plaintiff

furnishing bond with good and solvent surety and conditioned as the law requires, in the sum of $5,000.00.

Judgment rendered in open court on March 15, 1954, and read and signed in open court on this 25th day of March, A.D. 1954.

Allen V. Hundley, Judge.

[fol. 88] In Ninth Judicial District Court for the Parish of Rapides, State of Louisiana

[Title omitted]

No. 43739

Motion For And Order of Appeal—March 25, 1954

To the Honorable the Judges of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana:

On motion of United Mine Workers of America and all other parties made defendant in the above and foregoing matter, through their attorney, James I. McCain, and on suggesting to the Court that defendants are aggrieved by the judgment on the rule for a preliminary injunction herein rendered on the 15th day of March, 1954 and signed on the 25th day of March, 1954, said judgment being rendered in favor of plaintiff; that the said judgment is contrary to the law and the evidence, and that movers desire to appeal devolutively therefrom to the Supreme Court of the State of Louisiana.

It Is Ordered that a devolutive appeal be granted to the said United Mine Workers of America and all defendants in this matter, returnable to the Supreme Court of the State of Louisiana, on the 16th day of April 1954, upon said parties furnishing bond with good and solvent security in the sum of $500.00.

March 25th, 1954.

Allen V. Hundley, Judge.

[File endorsement omitted.]

[fols. 89-90] Bond on Appeal for $500.00 filed March 25, 1954 omitted in printing.

[fols. 91-92] IN NINTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

TESTIMONY AND NOTE OF EVIDENCE ADDUCED UPON THE TRIAL OF THE EXCEPTION TO CITATION, ON MARCH 12, 1954 AT ALEXANDRIA, LOUISIANA, BEFORE HIS HONOR, ALLEN V. HUNTLEY, JUDGE, PRESIDING—Filed March 27, 1954

APPEARANCES:

Messrs. Stafford & Pitts, by Grove Stafford and John Pitts, Alexandria, Louisiana, Counsel for Plaintiff.

Mr. James I. McCain, New Orleans, Louisiana, Counsel for Defendant.

[fol. 93] By Mr. McCain, Counsel for defendant.

I would like the record to show that at this particular time counsel for the United Mine Workers of America, one of the defendants, tenders and files in the record of this trial its Exception to the Citation in advance of any other pleadings and does not not join with the Exception to the Citation any other pleadings for filing and I request the Court at this time to hear me on the Exception to the Citation in advance of the filing of any other pleadings.

By the Court:

The Court will permit the filing of the Exception along with all other pleadings in the matter. The Court will reserve you the right reserved in the pleadings to have that taken up first and disposed of and then the other matters.

By Mr. McCain:

I will now submit to the Court my argument in support of my Exception to the Citation.

By Mr. Stafford:

The plaintiff objects to taking up any one pleading and suggests that the law requires the defendant to file all pleadings at one time with reservation of rights from one to the other.

By the Court:

The Court will not permit argument on the Exception, reiterating the first exception will be considered and application and determination will be reached thereon.

By Mr. McCain:

Therefore, subject to the order of the Court, we file all our other pleadings, submitting, of course, to the order of the Court, but not waiving any merits or right to present our Exception to the Citation, but filing the other pleadings at this time so that at this particular time I file as my second pleading an Exception to the Jurisdiction which [fol. 94] I ask the Clerk to mark and I file an Exception of Vagueness at this time as my third pleading, and, subject to the ruling of the Court, I file as my fourth pleading my return or answer to the petition and it is understood that the filing of these pleadings contemporaneously does not waive any right of the defendants, by that act, if the defendants should file the individual pleadings in advance of one or the other.

By the Court:

That's the understanding of the Court.

Testimony on Behalf of the Plaintiff

Mr. James Ledbetter called under cross examination, duly sworn, and testified as follows:

Objection by Mr. McCain: I would like at this time to enter a general objection to any examination of this witness for the purpose of showing that he is an agent or representative of the United Mine Workers, for the purpose of showing that citation can be made on him, because the law is well settled that service on anyone in the name of United Mine Workers is not a good service.

By the Court:

Overruled.

Cross-examination.

By Mr. Pitts, Counsel for Plaintiff:

Q. Mr. Ledbetter, where do you live?
A. I live in Oakdale.
Q. You are a resident of Oakdale?
A. I am.
Q. You are a citizen of Louisiana?
A. I am.
Q. How long have you lived in Louisiana?
A. Three years.

[fol. 95] Q. Mr. Ledbetter, I notice in Paragraph 15 of the answer which has been filed by the United Mine Workers in this case that it is contended that the Company's offices have been requested to recognize the United Mine Workers as a bargaining agent, who made that request?

A. I did.

Q. In what capacity did you make that request of the Arkansas Oak Flooring Company?

A. Well, I'm a representative for District 50 of the United Mine Workers. I did that in the capacity that the majority of the employees had signed cards with our Union.

Q. Had these men whom you purported to represent paid any dues to your Union?

A. They have not.

Q. If the Union would be recognized, they would pay dues I suspect?

A. If we get a contract with the Company—yes.

Q. Then they would pay dues to the United Mine Workers?

A. Yes, District 50, United Mine Workers.

Q. Now, this demand that you made for recognition was made solely by you was it not? I mean by that, you were the only representative of the United Mine Workers who claims to have made any demand on the Company, is that right?

A. Well, I wouldn't put it a demand. I'm the only representative of the Mine Workers Union that I know of that contacted the Company for recognition, if that's what you mean.

By Mr. Pitts:

That's all.

Direct examination.

By Mr. McCain:

Counsel for Defendants.

Q. What Company official did you contact, Mr. Ledbetter?
A. Mr. George Fowler.
[fol. 96] Q. I believe he's the Assistant Manager of the plant here?
A. That is my information.
Q. And how many, at that time that you contacted him, you had signed how many of the employees of the plant, I am referring to the Arkansas Oak Flooring Company?

Objection by Mr. Pitts: I would like to suggest at this time that Mr. Ledbetter is his witness and he doesn't have a right to call him under cross examination.

By the Court:

If you make a statement and put it in the record that you're submitting him as your own witness, otherwise it will be as cross.

By Mr. McCain.

Subject to the ruling of the Court I will ask that the witness answer the question.

By the Witness:

The question I think was "How many had signed cards with our union?" At that time we had 174 as my memory serves me. That's correct.
Q. Those were cards authorizing the Union to represent those employees with the employer for recognition and collective bargaining?
A. Right.

By Mr. McCain:

That's all we have.

Re-cross examination.

By Mr. Pitts:

Q. Mr. Ledbetter, does the United Mine Workers of America have any other agent in Rapides Parish besides you?

A. Well, sir, I will have to answer that this way. We're —our original office is in Baton Rouge and we are assigned out in areas where we have some work, local union work to do and I'm assigned up in this area. Does that answer your question?

Q. You're assigned to this area?

A. Temporarily, yes.

[fol. 97] Q. And you're the only assigned to this area at the present time?

A. Yes, as far as I know.

By Mr. Pitts:

That's all.

By Mr. McCain:

That's all.

Witness excused.

[fol. 98] Stenographer's Certificate to foregoing transcript omitted in printing.

[fols. 99-100] IN NINTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

TESTIMONY AND NOTE OF EVIDENCE ADDUCED UPON THE TRIAL OF THE EXCEPTION TO JURISDICTION, ON MARCH 12 AND 15, 1954, AT ALEXANDRIA, LOUISIANA, BEFORE HIS HONOR, ALLEN V. HUNDLEY, JUDGE, PRESIDING.—Filed March 27, 1954.

* * * * * * *

[fol. 101] Testimony on Behalf of the Defendants

Mr. J. G. SMITH called under cross examination, duly sworn, and testified as follows:

Cross-examination.

Mr. McCain:

Q. Mr. Smith, I believe you're the President of Arkansas Oak Flooring Company?

A. That is correct.

Q. That's correct, sir?

A. It is.

Q. I believe your corporation is incorporated under the laws of the State of Delaware?

A. That is correct.

Q. You own plants in other states, sir?

A. Here in Louisiana, yes.

Q. Do you own one in Arkansas?

A. Yes.

Q. That is located at (interrupted)

A. Pine Bluff, Pine Bluff, Arkansas.

Q. That's a plant similar to the one here, sir?

A. Very much.

Q. How long have you been with the Arkansas Oak Flooring Company, sir?

A. Twenty-eight years.

Q. It has, of course, been in corporate existence for that time?

A. Yes.

Q. Do you know how long it has been in existence?

A. Well, the Arkansas Oak Flooring Company was originally incorporated in 1915, but there's been some change. The present corporation of the Arkansas Oak Flooring Company was in 1933.

[fol. 102] Q. Where are the, your main offices?

A. In Pine Bluff.

Q. You have an office in Alexandria?

A. We do.

Q. You maintain offices in what other places?

A. We have some buying offices and yards in Texas.

Q. That's, those are offices to buy lumber which is shipped here?

A. Some of it is shipped here. Some Pine Bluff.

Q. Those offices—those are located where?

A. One in Rusk, Texas, Jefferson and Dayton.

Q. Those are all towns or cities in Texas?

A. Correct.

Q. And I assume that at those offices you maintain representatives for Arkansas Oak Flooring to buy lumber?

A. That's correct.

Q. Do you maintain any buying offices in any other states?

A. No. Except Arkansas.

Q. How many do you maintain in Arkansas?

A. We have two other than the Pine Bluff location.

Q. And they are located where?

A. Hoxie and Batesville.

Q. Now, do you maintain any selling offices?

A. No. No selling offices. All the selling is handled at Pine Bluff.

Q. The central office is at Pine Bluff?

A. Yes. That's right. We have salesmen on the road. Salesmen who operate out of the home office.

Q. Your offices in Louisiana and Texas are regulated more or less from the central office in Pine Bluff?

A. That's correct.

[fol. 103] Q. Now, the salesmen, of course, are salesmen to sell lumber is that it?

A. Sell our products, yes.

Q. Your product is what?

A. Oak flooring primarily.

Q. Do you sell anything else?

A. Some what we call miscellaneous items I could mention.

Q. All lumber, sir?

A. All products.

Q. The salesmen that represent your company travel in what states?

A. Well, they travel practically all the states.

Q. That's all forty-eight?

A. Well, they may not make it in all of them but we try to sell in all states.

Q. Well you would say that your salesmen go in at least forty of the states of the United States?

A. At some time or other, yes—this year or next year.

Q. That, of course, selling program is being maintained at the present time?

A. That's right.

Q. At your Alexandria plant you, I believe, convert rough oak lumber into oak flooring?

A. That's correct.

Q. The rough lumber is obtained where?

A. All over this state and part of Texas. I say all over this state—there are a number of points, but throughout this state and part of Texas.

Q. In other words, your buyers in Texas buy lumber there that is shipped to your local plant?

A. Portions of it.

[fol. 104] Q. Is any lumber shipped here from Arkansas?

A. I don't think we have any shipments from Arkansas come in here now. I suspect in years gone by there may have been some.

Q. Can you give us an approximate figure on how much of this lumber that is used in your Alexandria plant comes from those (interrupted)

A. No, I couldn't without some figures. I'm not prepared to give any percentage on it.

Q. Would you say it's a half?

A. I'm not prepared. I don't have any idea and I don't want to make a guess.

Q. But the lumber that comes to Alexandria from Texas is bought through your four buying offices in Texas?

A. Well, I think I only mentioned three.

Q. Well, I'm sorry, three then.

A. Well, there may be lumber that comes from Texas that originates from other points. We don't restrict ourselves to those buying offices. If someone has lumber and we need it; we buy it.

Q. Your lumber comes to your Alexandria plant from Texas by what means of transportation?

A. Primarily by rail.

Q. Any by trucks?

A. Yes. There has been some by trucks, yes.

Q. And your finished products (interrupted)

Objection by Mr. Stafford: All of this is costing everybody time and money. I don't want to interfere with counsel's idea of establishing his case but all of this leads to but one thing—that this company is engaged in interstate commerce. We are engaged in interstate commerce I offered to admit that. We make no legal admission except the factual situation that this company is engaged in interstate commerce.

[fol. 105] By the Court:

That is irrelevant but let him go ahead and ask the question.

By Mr. McCain:

The finished product, Mr. Smith, is sent to approximately how many states from Alexandria?

A. I think the record has already shown there—some forty. That varies in different years. We would like to sell in every state.

Q. But you are at the present time selling in a number of states?

A. In a number of states, yes.

Witness excused.

[fol. 106] Monday, March 15, 1954

CORNELIUS WESLEY BROWN called under direct examination, duly sworn, and testified as follows:

Direct examination.

By Mr. McCain:

Q. What is your name?
A. Cornelius Wesley Brown.
Q. Where do you live?
A. 1014 Fulton Street, Alexandria, Louisiana.
Q. Are you presently employed?
A. (Witness doesn't answer.)
Q. Are you presently working today?
A. Yes. Not today.
Q. When is the last day you worked?
A. Friday, the 27th.
Q. Is that the Friday before the men went on strike?
A. Right.
Q. And the men went on strike on what day?
A. First of March.
Q. That is this year?
A. That's right.
Q. And for the record, what day of the week was that—Monday, Tuesday, Wednesday?
A. Monday.
Q. Now, will you state whether or not you went out on strike on that day?
A. (Witness does not answer.)
Q. Did you? Did you?
A. Yes.
Q. Of course. Where were you working before Monday, March 1, 1954?
A. Arkansas Oak Flooring.
[fol. 107] Q. And you had been working for approximately how long?
A. Eight months.
Q. That is the Arkansas Oak Flooring Plant here in Alexandria?
A. Right.
Q. Now, I call to your attention that this suit has been

filed against the following named men: Richard Vidrine, Louis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mac Kelly, Eddie Goff, Will Cobb and John Doggins. Will you state whether or not you know those men?

A. I know a few of them in person. I know the rest of them when I see them, when they tell me their name is so and so I know them when I see them.

Q. Where were those men working, to your knowledge, prior to March 1, 1954?

A. Arkansas Oak Flooring Company here in Alexandria, Louisiana.

Q. Will you state whether or not these men went out on strike?

A. They did.

Q. Do you know whether or not picket lines were put up around the Arkansas Oak Flooring place on March 1st?

A. Yes, I do.

Q. Who were the pickets?

A. I, myself, for one, Eddie Goff, Leonard Fuller was one, Jesse Lair,

Q. Were they all employees at the Arkansas Oak Flooring Company?

A. Yes, they was.

Q. The picket line was maintained how long?

A. Until March 2nd.

Q. 1954?

A. 1954.

Q. And where was the picket line put up?

[fol. 108] A. Two on Texas Avenue, and one, I don't know the name of the street, but it's on the side next to the railroad track.

Q. And they were in front or around what plant?

A. Arkansas Oak Flooring.

Q. And what was on the picket signs?

A. One "This plant is on strike." The other sign was "We want recognition—District 50 UWA".

Q. Will you state whether or not the men at, or the employees at the Arkansas Oak Flooring Company had organized into any union group?

A. Will you mind repeating that?

Q. Will you state whether or not the men or employees

at the Arkansas Oak Flooring Company had organized into any union group?

A. Yes, they had.

Q. And what was that group?

A. The United Mine Workers of America.

Q. And what representative, if any, assisted in the organization?

A. The representative's name is James L. Ledbetter.

Q. And he represented District 50, United Mine Workers of America?

A. That's right.

Q. Did you hold any, did you hold any office in that particular union group?

A. President.

Q. Who elected you?

A. The employees.

Q. Were there any other officers?

A. Yes, there was some.

Q. Did you have stewards elected?

A. We had stewards elected.

Q. Who selected them?

A. The members of the union.

[fol. 109] Q. Why did the union of which you were President go out on strike?

A. We went out on strike for recognition.

Q. Recognition of what group?

A. United Mine Workers of America, District 50.

Q. Of which you were President?

A. Right.

Q. Did you have a meeting—state whether or not you had a meeting to determine whether you would go out on strike?

A. Yes, we did.

Q. When was that meeting held, Cornelius?

A. We had a meeting Tuesday the 23rd.

Q. Of what month?

A. February.

Q. For what purpose?

A. We had a meeting for the purpose of asking for recognition.

Q. Did you ask for recognition?

(Stenographer's note: The answer given by the witness was objected to and ordered stricken by the Court).

Q. What do you know of your own knowledge, Cornelius, don't repeat what anybody told you, what do you know about any demand for recognition of your Union?

A. (Witness's answer objected to and ordered stricken by the Court).

Q. You were present at the time the demand was made?

A. (Witness's answer objected to and ordered stricken by the Court).

Objection by Mr. Pitts; I ask that all testimony about a demand for recognition either be stricken or be considered as hearsay. If the demand was made, the proper way to establish that is by the man who made it.

By the Court:

Let the testimony in respect to his knowledge of the demand or statement to the effect that a demand was made be stricken. Motion to strike sustained.

[fol. 110] By Mr. McCain:

Q. What was this day, Brown, when you went with Mr. Ledbetter to the Plant to see Mr. Fowler?

A. Wednesday, the 24th of February, 1954.

Q. Who is Mr. Fowler?

A. He is the Assistant Superintendent of the Plant here in Alexandria.

Q. And what, if anything, did you do in the presence of Mr. Fowler, as far as Mr. Ledbetter is concerned? Did you point him out or what?

A. I pointed him out when he was driving up in his car.

Q. Did you hear any of the conversation that followed between Mr. Ledbetter and Mr. Fowler?

A. No. I had to be back in the Plant. It was time for me to be in the plant at my job.

Q. At this particular time how many men had signed up with the Union, District 50, that is—employees at the Arkansas Oak Flooring Company?

A. 174.

Q. And they had signed up to have this Union represent them at the Plant?

A. That's right.

Cross-examination.

By Mr. Stafford:

Q. Tell us again what was on that picket sign that you were carrying around?

A. The first one was "This Plant is on Strike."

Q. Now, what was on the other one?

A. "We want Recognition, District 50 UMWA."

Q. Am I correct in saying that the purpose of the strike was to compel Arkansas Oak Flooring Company to recognize this Union?

A. Repeat that.

Q. Am I correct in saying that the purpose of the strike was to compel the Arkansas Oak Flooring Company to recognize (interrupted).

A. Not compel.

[fol. 111] Q. To induce them then?

A. We was asking them to recognize us.

Q. And what you wanted and what you hoped to get by this strike was to have Arkansas Oak Flooring to recognize you as the bargaining agent?

A. Repeat that.

Q. Then was the purpose of the picket line to have the Arkansas Oak Flooring Company recognize this Union as the bargaining agent of the men?

A. That was the purpose.

Q. And by the picket line you hoped to induce the men not to cross the line and go to work while you were on strike, did you not?

A. By the picket line—we wanted recognition and the men who signed up automatically they wouldn't cross the picket line.

Q. So you hoped to keep the men who had been working for Arkansas Oak Flooring Company to stay away from that shop by this picket line?

A. We had 174.

By Mr. Pitts:

You're smart enough to understand my question and answer it.

By Mr. McCain:

As attorney for, counsel for all defendants and the Union, I will admit that the purpose of the picket line, just like all picket lines, is to keep the people, the public at large, not to cross the picket line.

By the Court:

Answer counsel's question if you can.

By Mr. Pitts:

Isn't it a fact, Brown, that by establishing this picket line, the Union hoped to keep the men from going back to work?

A. I don't understand that quite well.

Q. When you put that picket line at the entrance of the plant, didn't you, as President of the Union, hope to keep the men from crossing that picket line to get to their work?

A. We did.

[fol. 112] Q. Now Brown, no petition has been filed by this Union with the Labor Board to force Arkansas Oak Flooring to recognize that Union, has there?

A. Would you mind repeating that again?

Q. Has this Union filed any petition or application with the Labor Board to have it recognized as the bargaining agent of the employees of Arkansas Oak Flooring Company?

A. None to my knowledge.

Q. Do you know why not? Don't you know, as a matter of fact, that this Union has not complied with the Federal Law and cannot use the services of the Labor Board?

By Mr. McCain:

I submit that the best evidence of whether or not the Union has complied, the United Mine Workers, with the requirements of the Employers Relation Act of 1947 are the records of the Labor Board Regional Director, District 150, in the City of New Orleans and to save the time of the Court I will admit that the United Mine Workers of America, District 50 has not complied with those requisites of the Employment Act; that is, the former Taft-Hartley

Act, authorizing the United Mine Workers to use the facilities of the National Labor Relations Board.

By the Court: Overruled.

(Question read to witness).

A. Yes.

Q. Brown, who has directed this strike and the arranging of the picket line and things of that type. Who has been in charge of that?

A. Myself and the representative.

Q. By representative you mean Mr. Ledbetter, the gentleman that testified last week?

A. Right.

Q. Brown, do you know the name of the Manager of the Arkansas Oak Flooring Company?

[fol. 113] A. The Manager?

Q. Yes.

A. J. G. Smith.

Q. He is the President in Little Rock. Do you know the man who manages the mill here in Alexandria?

A. S. C. Griffith.

Q. That's all.

By Mr. Pitts:

The plaintiff, Arkansas Oak Flooring Company, offers and asks to be filed in evidence a letter from the National Labor Relations Board which is marked Plaintiff's Exhibit No. 1.

By Mr. McCain:

I have no objection to admission of the letter. My admission is that if Mr. Lebuse were present in court he would testify as to the information as contained in this letter.

By the Court:

Offering ordered.

Offering: Plaintiff's Exhibit No. 1 filed in evidence.

Witness excused.

[fol. 114] Cornelius Wesley Brown, recalled by Mr. Stafford, counsel for plaintiff, and having been previously sworn, testified as follows:

Re-cross-examination.

By Mr. Stafford:

Q. Brown, at the time you and Mr. Ledbetter planned to see Mr. George Fowler, you knew that Mr. Griffith was out of Town didn't you?

A. Right.

Q. That's all.

Witness excused.

[fol. 115] Stenographer's Certificate to foregoing transcript omitted in printing.

[fols. 116-117] In Ninth Judicial District Court in and for the Parish of Rapides, State of Louisiana

[Title omitted]

Testimony and Note of Evidence Adduced Upon the Trial of the Merits, on March 15, 1954, at Alexandria, Louisiana, Before His Honor, Allen V. Hundley, Judge Presiding—Filed April 3, 1954

[fol. 118] Stipulation

Such evidence as heretofore introduced on the trial of exceptions filed will be received in evidence on the main issue.

Testimony on Behalf of the Plaintiff

Mr. S. C. Griffith called under direct examination, duly sworn, and testified as follows:

By Mr. Pitts: Counsel for Plaintiff

Q. You are Mr. C. S. Griffith?

A. Right.

Q. Where do you live?

A. In Alexandria.

Q. What is your connection with the plaintiff, Arkansas Oak Manufacturing Company?

A. Manager of the Alexandria plant.

Q. Does this company have another plant?

A. They do.

Q. Where is it located?

A. In Pine Bluff, Arkansas.

Q. Who is the President and Chief Executive Officer?

A. Mr. J. G. Smith.

Q. Where does he maintain his office?

A. In Pine Bluff.

Q. That's where the company's other plant is located?

A. That is our headquarters—in Pine Bluff.

Q. Mr. Griffith, just prior to the time this picket line was established on Monday, March 1st, how many employees did you normally have at this mill here in Alexandria?

A. 125 exclusive of officers, inspectors and foremen.

Q. You mean 125 or 225?

[fol. 119] A. 225.

Q. Now after this picket line was established on Monday, March 2, how many employees did you have report the next day or March 2?

A. Seventy-five.

Q. Did I say established on March 1 or March 2? It was established on March 1 then you had only seventy-five on March 2, which was the next day after the picket line was established?

A. That's right.

Q. Now, how many employees did you have report to work on, say, Thursday of last week after the picket line had been removed—Thursday, March 4?

A. I don't know the exact number on Thursday but I can give the exact number on Friday.

Q. Well, how many did you have Friday, March 5?

A. 186.

Q. Now, when your employees were reduced to seventy-five right after the picket line was established, Mr. Griffith, what effect did that have on your operations?

A. Well, it reduced our production about seventy-five per cent.

Q. How many complete flooring units do you operate in the mill?

A. Four.

Q. Now, when you had only seventy-five employees, how many units were you able to operate?

A. One only.

Q. Now, on Friday of last week which was March 5, and you say you had 186 employees, how many units were you able to operate?

A. We were operating two at full time and two on part time. Very limited production on the other two.

Q. Now, how many employees do you have today, which is March 15?

A. 175.

[fol. 120] Q. Is Monday ordinarily different from any other day?

A. We seldom have a full crew on Monday or Friday.

Q. Now Mr. Griffith, prior to the establishment of this picket line around the Alexandria Plant, did any representative of the United Mine Workers ever make request of you for recognition?

Objection by Mr. McCain: Before the witness answers I would like to enter this objection, that if counsel is attempting to show that the Union gave no notice of an intended strike, made no demand for recognition and; therefore, the strike is illegal or improper; for that reason I object to any evidence along that line for the reason that it is not pleaded as a basis for the illegality of the strike or peaceful picketing.

By the Court:

Overruled.

By Mr. McCain:

The objection goes to all evidence along this line.

By the Court:

It is so ordered.

By Mr. Pitts:

Do you recall the question, Mr. Griffith? I asked you whether prior to the establishment of this picket line any

representative of the United Mine Workers ever made the request of you for recognition of this Union?

A. They had not.

Q. Mr. Griffith, at any time, that is before the establishment of this picket-line, did you to your knowledge have any dispute of any kind with any of your employees over wages, hours or other working conditions?

A. I had not.

Q. Mr. Griffith, are you more or less personally acquainted with all of the defendants in this suit who are your employees?

A. Yes, sir.

Q. You know them mostly by sight?

A. Yes, sir.

Q. Are they all more or less day laborers, Mr. Griffith?

A. All of them are day laborers.

[fol. 121] Q. Any of them persons of means of property?

A. I wouldn't think so. I don't know.

Q. You know any of them that has any means?

A. I don't know any of them, no, sir.

Q. Who is Mr. George Fowler, Mr. Griffith?

A. He is in charge, Assistant Manager in charge of production at our plant.

Q. What are his duties in the mill?

A. To keep the plant running and see that the flooring is made right and keep up production.

Q. You mean he actually operates out in the mill itself?

A. That's right.

Q. Is the company office, the clerical office, removed from the manufacturing portion of the mill?

A. Yes, sir.

Q. Is your office in that separate building?

A. Yes, sir.

Q. Does Mr. Fowler have anything to do with fixing the wages or other working conditions of the employees?

A. Our wages, hours and working conditions, in fact all the policies, are made in the Pine Bluff office.

Q. That's where Mr. Smith, the President, is located?

A. That's right.

Q. Your witness, Mr. McCain.

Cross-examination.

By Mr. McCain: Attorney for Defendants

Q. Mr. Griffith, you said you were the Manager of the Louisiana plant, sir?

A. Yes, sir.

Q. When you're absent from the plant, who is in charge?

A. Mr. Fowler, as Production Manager.

[fol. 122] Q. In other words, he's next in line, so to speak, in the Plant?

A. That's right, yes, sir.

Q. Were you in Alexandria on Tuesday and Wednesday and Thursday before the strike?

A. No, sir.

Q. Where were you, sir?

A. In Texas.

Q. And during those days Mr. Fowler was in charge of the Plant?

A. That's right, yes, sir.

Q. Now you stated that on March 1st, the day the picket line was first put up, you only had seventy-five of your two hundred twenty-five employees?

A. That's right, yes, sir.

Q. Then, I conclude from that that one hundred and fifty were out?

A. That's right.

Q. Now, when you figure your employees at two hundred twenty-five, do you include only the plant employees?

A. That does not include the office workers, the lumber inspector and the foremen.

Q. I see, sir. Now, I think you stated this walk-out or absence from the Plant affected your production at first seventy-five per cent?

A. That's right.

Q. That affected your shipping department I guess?

A. Yes, sir.

Q. And your receiving department?

A. Yes, sir. They were all affected.

Q. In other words, every unit in the Plant was affected?

A. Yes, sir.

Q. That did affect your shipments from your Plant during those days?

A. We had some shipments from the plant those days.

[fol. 123] Q. But not as much as if you had had a full Plant?

A. That's right, yes, sir.

Q. You said you were able to operate only one unit during those first two days?

A. That's right.

Q. This effect on your production affected some of your shipments out of the State, I assume?

A. Out of the State?

Q. Yes, sir.

A. Well, any of our shipments may be out of the State.

Q. Well, the effect on your business—it did affect your deliveries of your finished product?

A. That's right, yes, sir.

Q. And it affected your deliveries that you put on the railways to go outside the State?

A. That's right, yes sir.

Q. That continued how long, sir?

A. We're not in full production yet.

Q. So that up to the present time your entire production is still being affected?

A. That's right, yes, sir.

Q. And your entire shipments are still being affected?

A. Yes, sir.

Q. Those are shipments both within and without the State?

A. That's right.

Q. I call to your attention the petition, the original petition of the Arkansas Oak & Flooring Company, apparently signed by S. C. Griffith and ask if that's your signature?

A. Yes, sir.

Q. I'm reading, Mr. Griffith, from Paragraph 5 of your petition:

[fol. 124] "That such picket line has caused a large number of its employees to refuse to cross the same and to report for work with the result that the petitioner's operations have been greatly curtailed." Could you be a little more specific about how your operations have been curtailed?

A. We didn't have enough men to operate on the machine or unload all the lumber or load out all the flooring.

Q. As Manager of the Plant here, would you be willing at this time to submit this matter to an election by a proper or impartial party, to determine whether United Mine Workers represent a majority of your employees?

Objection by Mr. Pitts: That isn't a question or issue before the Court at this time. We are here strictly to determine whether we are entitled to an injunction.

By Mr. McCain:

For the record I would like to say that counsel have alleged and the employer has alleged in his petition that the United Mine Workers does not represent a majority of the employees and my purpose is to show that the employer is unwilling to submit this matter to an election if the United Mine Workers represented one hundred per cent of the workers.

By the Court:

Objection sustained.

By Mr. McCain:

Mr. Griffith, Do you use any company owned trucks in connection with the Louisiana Plant for the picking up of lumber and delivering lumber?

A. No, sir.

Q. Do you know what approximately, what portion of your production or deliveries is made outside the State of Louisiana?

A. I don't exactly know.

Q. Could you give me an approximate figure?

A. I'd say twenty per cent.

Q. And eighty per cent of your entire production is sold in Louisiana?

A. No. I thought you said rough material bought out of Louisiana.

Q. Your rough material is bought outside this State and within the State of Louisiana?

[fol. 125] A. That's right.

Q. From your answer I assume that twenty per cent of your rough material is bought outside the State and eighty per cent within the State of Louisiana?

A. I wouldn't give you figures as being accurate but as near as I recall it's in that neighborhood.

Q. You gave me the approximate figure. How much of your product is delivered outside the State after the finished product?

A. Approximately ninety per cent.

Q. Is delivered outside the State?

A. Yes, sir.

Q. Is there a union at the Plant now?

A. No, sir.

Q. Was there one on March 1, 1954?

A. No, sir.

Q. How long has there been since there's been a union there?

A. Approximately four years.

Q. That's all I have.

Witness excused.

[fol. 126] Mr. J. G. Smith called under direct examination, duly sworn, and testified as follows:

By Mr. Pitts: Counsel for plaintiff.

Q. Mr. Smith, you live in Pine Bluff?

A. In Pine Bluff.

Q. What is your connection with the Arkansas Oak Flooring Company?

A. I am President.

Q. Are you also the Chief Executive Officer of the Company, Mr. Smith?

A. I am.

Q. Does the Company maintain a Plant where you're located in Pine Bluff?

A. They do.

Q. Mr. Smith, prior to March 1st, when this picket line was established, did any representative of the United Mine Workers ever at any time call on you and demand recognition of this Union?

By Mr. McCain: I repeat the objection made before on the other witness.

By the Court: Overruled.

A. No. No one called on me. I had no communication of any kind.

Q. Mr. Smith, prior to this picket line being established, did you, to your knowledge, have any dispute of any kind with your Alexandria employees over wages, hours or other working conditions?

A. To my knowledge no dispute of any kind existed.

Q. Did you come down here when the strike was called, Mr. Smith?

A. Yes I did. When I was notified I came immediately.

Q. I'll ask you what effect the picket line and the consequent reduction of your production has cost the Plant from the time of the establishment of the picket line, say to the beginning of this trial on last Friday?

Objection by Mr. McCain: I object unless the witness can show the basis upon which he makes his statement. I assume he is going to give an opinion or merely an estimate.

By the Court: Sustained.

[fol. 127] Q. Mr. Smith, do you know whether the Company has sustained any pecuniary loss because of this strike?

A. Yes, they very definitely have.

Q. Why? Just tell why?

A. In a Plant the size of ours, we have considerable overhead expense. That goes on whether we're running or whether we're not running and naturally when we're down and we have no revenue coming in that expense is quite terrific. I would roughly estimate that this has cost us in this length of time in excess of $5,000.00.

Q. Are you able to fix it exactly, Mr. Smith?

A. No. I couldn't fix it exactly unless I could sit down and compute it. I'm of the opinion it's considerably more than that.

Q. You put that as a minimum figure?

A. As a minimum.

Q. Are you familiar enough with the operations of the mill to make that approximate estimate?

A. I have had the experience of doing all of the bookkeeping and general auditing work and I've been through the mill from the bottom to the top and I think that I'm

qualified to make a minimum estimate of what this thing has cost us.

Q. That's all.

Cross-examination.

By Mr. McCain, Counsel for Defendants:

Q. Mr. Smith, Mr. Griffith I believe said that, gave certain figures as *as* to the number of employees at work the last week of February 1954 and the number that reported for work on March 1, 1954, the first day of the strike. He stated that 150 employees failed to show up that day. Are you familiar with those figures.

A. Yes, I am.

Q. Now, he stated that on Friday, March 5, that there were 186 employees at the plant, and at the present day you only have 175. Can you give us any figure as to the [fol. 128] original 150 that walked out, how many came back?

A. Yes, I believe I can now, if you'll let me think a minute. Of the 150 that, refer to the note here I might have it. I asked that same question at the office this morning and I had a memorandum of it but I fail to have it with me.

Q. Well, if you want to get the information from Mr. Griffith, I have no objection.

A. Your question was how ~~many of the~~ 150 that returned were (interrupted)——

Q. The original 150.

A. Originally were out?

Q. Yes, sir—of the local employees.

A. I thought I had that but I can give it to you from memory and I think I'm probably correct. I think, the best I can remember from the figure that was given me this morning was all of them but thirty. That's from memory as they gave them to me this morning.

Q. Well, you did bring in some men I think from Pine Bluff for the local plant, didn't you?

A. Two men, yes.

Q. Is that all you brought in?

A. Yes, sir. Two men.

Q. Well, you went from 75 to 186 the first week?

A. That's correct.

Q. That's a difference of 111. Now only two of that increase were people from out of the—did not work (interrupted)——.

A. One was here prior to the strike which would make three total but he's returned to Pine Bluff. There was one that came down about a week before the strike.

Q. I see. That's all, sir.

Witness excused.

By Mr. Pitts: Plaintiff rests, Your Honor.

[fol. 128] Testimony on behalf of the Defendants.

James L. Ledbetter called under direct examination, duly sworn, and testified as follows:

By Mr. McCain, Counsel for Defendants:

Q. Mr. Ledbetter, you have previously identified yourself in this case as what, sir?

A. James Ledbetter.

Q. And you are, what is your business?

A. I'm a representative of District 50, United Mine Workers.

Q. Do you represent the United Mine Workers or District 50?

A. District 50.

Q. What is the difference between District 50 United Mine Workers and United Mine Workers?

A. Well, District 50 is a District in the United Mine Workers of America.

Q. Is United Mine Workers of America the General Federation or International Union?

A. That's right.

Q. Now, you have been with District 50 how long, Mr. Ledbetter?

A. A little over three years.

Q. And you have worked for District 50 in what capacity?

A. As a representative.

Q. How long have you been working in that capacity in Louisiana?

A. Three years.

Q. And your home is where, sir?

A. Oakdale.

Q. And you have worked in other plants in Louisiana in behalf of United Mine Workers?

A. I have.

Q. You've organized other plants?

A. I have.

[fol. 130] Q. To your knowledge, District 50 has contracts with other plants in the State of Louisiana.

A. I do.

Q. Can you name some of them, to your own knowledge?

A. You mean some of our local unions?

Q. Yes.

Objection by Mr. Pitts: That's objected to, Your Honor, as irrelevant. I can't see that it has anything to do with this law suit. He might name all of them in the United States.

By the Court:

Sustained.

By Mr. McCain:

I asked this witness, and I'll repeat the question if I may.

By the Court:

Go ahead.

By Mr. McCain:

To your personal knowledge at what plants in the State of Louisiana, at the present time is United Mine Workers the bargaining agent for the employees? Now don't answer—let the Court rule.

By Mr. Stafford:

And we make the same objection, if the Court pleases, as we urged before.

By the Court:

Sustained.

By Mr. McCain:

Mr. Ledbetter, to your knowledge, at the present time, how many employees does United Mine Workers represent in the entire country?

Objection by Mr. Stafford: That's objected to as irrelevant and immaterial, if the Court pleases.

By the Court:

Sustained.

By Mr. McCain:

All right, one more along that line.

By the Court:

Go ahead.

By Mr. Stafford:

May I just make my objection general, if the Court pleases.

By the Court:

Let the objection be made general. Go ahead.

By Mr. McCain:

How many local unions are there in District 50?

By Mr. Stafford:

Objected to.

[fol. 131] Q. When did you first come into Alexandria for the purpose of contacting the plant of the Arkansas Oak Flooring?

A. Well, I can't give you the exact date on that. I would have to check my records to know, but approximately, I could maybe give you something approximately on it. It

must have been along sometime in November, October or November, somewheres along in there.

Q. What year, sir?

A. 1953.

Q. In other words, you mean last October or last November?

A. Right.

Q. And what did you do after you came here for that purpose? What did you do toward contacting or inquiring relative to the plant of the Arkansas Oak Flooring Company in Alexandria, Louisiana?

A. Well, if I may, I'll just start.

Q. That's what I want you to do. Tell the story.

A. I came in here and made contacts with different employees that's working for the Arkansas Oak Flooring so I found interest enough to convince (interrupted).

Objection by Mr. Stafford: If the Court pleases, we're not interested in this man's opinion. I think that if this is pertinent testimony at all, which I very seriously doubt, I think the factual situation alone would be evidence. That he contacted the men and signed them up. I wasn't going to object to that but I think the by-play, that he found interest enough to convince him, that's not a factual situation and we're here strictly to hear facts from a witness, not opinions, not ideas and anything else.

By Mr. McCain:

Mr. Stafford, if you hadn't made that objection we would have been through a long time ago.

By Mr. Stafford:

Well, maybe so, maybe not, but I still make my objection that it's illegal testimony.

By the Court:

Sustained.

By Mr. McCain:

[fol. 132] Your Honor, I certainly have a right to show that they organized locally a union and that's just what I'm trying to do—to show how they organized the local union.

There is a contention here that this is not a union dispute and I am merely trying to show very briefly and I think, I submit, very pertinently to the case that the plant was organized in a legal, normal accepted fashion. Now, that's what I'm trying to get out of this witness and will go right into it very quickly and very briefly, if you will permit.

By the Court:

I don't think there's objection to your putting into the record the fact that the employees were organized. Now, the details into which the organizer went were irrelevant. Go ahead.

By Mr. McCain:

Did you organize the plant at the Arkansas Oak Flooring Company?

By the Witness:

Not the plant. I organized the employees—could come in the bargaining union.

Q. And, very briefly, how did you do that?

By Mr. Stafford:

Now that's objected to, if the Court pleases. We've got the fact before us and there's no denial of the fact. But his methods—I don't think we're concerned with it at all. He might have done it by wooing them, by any of fifty methods. Now we're simply not concerned with the method. The results have already been stated and I think that's proper evidence.

By Mr. McCain:

I submit it is most pertinent, if the Court pleases, to prove that stewarts were selected, that the president was selected, that the entire set-up for a local union was conducted in this particular case and that's what I'm trying to prove.

By the Court:

I was just going to offer the suggestion. The court, in its ruling heretofore made a statement that such matters as were pertinent would not be excluded but not leave it to the witness to determine but reach that determination yourself and accordingly ask him such questions as will put [fol. 133] in the record what you wish.

By Mr. McCain:

Mr. Ledbetter, when you came in October, did you, answer yes or no now, did you proceed to organize the plant at the employees at the Arkansas Oak Flooring?

A. I did.

Q. Will you state whether or not stewarts were selected by the employees?

A. They were.

Q. How many stewarts were selected?

A. I have a record of them but I don't—it seems to me it was around twelve.

Q. Did you elect officers, did the employees elect officers in their union?

A. They did.

Q. When were these officers, approximately when were these officers elected?

A. I don't remember the exact date. But it was before Christmas of '53—maybe it was somewheres near December 1st.

Q. Did you proceed in this connection with signing up various employees at the Arkansas Oak Flooring Company to union applications and union cards?

A. I did.

Q. I show you what purports to be a membership application and checkoff authorization District 50, United Mine Workers, and ask you if you can identify that document?

A. I can.

Q. Will you state whether or not the organization of the local union at the, among the employees of the Arkansas Oak Flooring Company, if any of the employees signed this particular application?

A. You mean that particular one?

Q. No, one like it, Mr. Ledbetter.

A. They were all like that.

Q. In other words, that is a copy of the one that they all signed?

[fol. 134] A. They're all alike. I couldn't say it's a copy but they're all alike.

Q. That's an exact reproduction of what the employees signed?

A. That's right.

Q. And how many signed that particular document before the strike was called?

A. We had 174 cards signed when I asked for recognition, if that will answer your question.

Q. Yes, that's what I want to know. Have you signed up any since March 1?

A. Yes?

Q. How many?

A. Well, we have 179 now. That would be five.

Q. Now, you said that you had 174 of the employees at the Arkansas Oak Flooring signed to this document which I have identified as "D-1" and which I now offer in evidence as Defendant's Exhibit D-1, and at the time that you went and asked for recognition and had 174 signatures on the D-1 application, will you tell the Court the circumstances under which you went and asked for recognition?

By Mr. Stafford:

If Your Honor pleases, I think all of that has been testified to before. I don't particularly object to the man repeating if he wants to and if the Court wants to hear it but I know every bit of it came in on the trial of the exceptions.

By the Court:

If the Court recalls the testimony, it was put in evidence that Mr. Fowler was approached and I don't know whether counsel remembers that. If you wish to amplify that you may.

By Mr. McCain:

I would like to give the whole story since now they have made an issue of the fact that the company did not receive

notice and by asking the witness the questions about the nature of the notice to the company I do not — that we have any objections that the company could not raise that issue in this particular case because they did not plead it.

Q. Will you give us the details of your demand on Mr. Fowler for recognition of United Mine Workers, District 50, as the bargaining agent for the employees?

[fol. 135] A. If I understand the question right, you want me to tell — did I go to him and ask for recognition, is that the question?

Q. Well, I'll give it to you piece by piece then, Mr. Ledbetter.

By Mr. Pitts: Ask him what he did, Mr. McCain, don't lead him, please.

Q. Did you meet with the union the night before you went to see Mr. Fowler?

A. I did.

Q. What did the union authorize you to do at that particular time?

A. They authorized me to go and ask for recognition of our union.

Q. Was that a unanimous authorization by all of the members of the union?

A. It was.

Q. When did you have that meeting? What time of the day?

A. That was after quitting time so I guess it must have been, the meeting probably started about 5:15-20 something like that on Wednesday I believe. I'm not sure. I would have to check my records.

Q. But it was after working time?

A. Yes.

Q. Where did you meet?

Objection by Mr. Stafford: If your Honor pleases, counsel is straying. Your Honor ruled that he could prove that a demand was made and the circumstances about the demand but now we're going into inter-union affairs that we're not concerned with. We weren't at the meeting. It's every bit hearsay to us. It's something done by other people. It's assumed that this man when he went there that he had authority.

By the Court: Sustained.

By Mr. McCain: Were you authorized to make a demand n the company for the purpose of union recognition?

A. I was.

Q. Now, the next day, did you go to the plant for that urpose?

A. I did.

Q. Who went with you?

fol. 136] A. I went alone. I was to meet the president out here at the noon hour. They get off an hour for noon and Ir. Fowler was late getting back to work so the employees ave to punch in after the noon hour to go back to work.

Q. Now, just a minute. You say you met the president, ou mean—what man?

A. Brown.

Q. The president of the union?

A. Local union.

Q. Very well, go ahead.

A. So Brown immediately, his time—his time ran out, he urned to punch in to go back to work and he saw the car ome in that Mr. Fowler come in and he pointed him out to ne that that was him so I seen him and talked with him. sked him for recognition.

Q. With—hom?

A. Mr. Fowler.

Q. Now do you see him in Court here? Is this the man ou talked to?

A. Well, I only seen the man for just a few minutes. I hink that's the man. I believe he had on working clothes hat day though.

Q. Well, did you ask him for his name?

A. I went up and introduced myself. He got out of the ar when he stopped and he came walking back meeting me. le said, "Are you looking for someone?" I says "I'm ooking for Mr. Fowler". He said, "I'm Mr. Fowler." presented my credentials to him and told him that we epresented a majority of his employees. He told me that e wasn't recognized by the National Labor Relations Board nd that he didn't recognize us either.

Q. What else was said?

A. I told him we would love to talk the matter over with him and he said he had no more talk to do. So he turned away and I did too.

Q. Did he tell you anything—what you could do about it?

A. He said we could do what we wanted to.

Q. Well, at that time did you make a formal demand on him for recognition of the union?

[fol. 137] A. I did.

Q. When you say you gave him your credentials, what did you show him, Mr. Ledbetter?

A. The credentials that I am issued from my superior.

Q. Well, what is that? Well, just tell me what it is.

A. Well, it's a card showing who I am.

Q. Showing that you're an organizer?

A. Right.

Q. Now, after that did you report back to the union?

A. I reported back to the local union.

Q. That is the local union of the employees at Arkansas Oak?

A. Right.

Q. And when did you report back to them?

A. It was that afternoon. I have a record of all of this in my reports. It may have been the next afternoon. I'm not positive but anyway as soon as a meeting could be called.

Q. Well, it was either the same day or the next day?

A. Right.

Q. And you had a meeting?

A. Yes.

Q. And did you report to the members of the union what had happened?

A. I did.

Q. And did they authorize a strike because they refused to recognize the union?

A. They voted to strike for recognition.

Q. And the strike was called when?

A. On March the 1st, I believe it was.

Q. When did you first put up your pickets?

A. First day of the strike.

Q. Well, what day was that?

[fol. 138] A. It was on a Monday.

Q. March 1st.

A. I think so.

Q. Well, that's correct isn't it?

A. That's correct.

Q. That's what I want to know. Was the picketing peaceful?

A. It was.

Q. How many pickets did you put up?

A. We put up two when we first set up and the fellows begin to gang down there and the Deputy Sheriff, he came over and talked to me and told me some word that the Sheriff had told him to so I told him not to worry. We wasn't going to have any trouble. We was going to conduct ourselves peacefully and I talked with the fellows and we cut it down with about two pickets with about four men more to use as relief so actually it's been six men, with two at a time.

Q. And they picketed the plant only?

A. Yes, sir.

Q. The pickets were placed on what street?

A. I think they call it Texas Avenue or Street. Texas something. I don't know if it's street or avenue.

Q. Were any put in the back by the railroad?

A. I think there were one put back there. However, I was not back there.

Q. Now, do you have present with you the signed membership applications?

A. I do.

Q. May I have them.

A. I have them right over there.

Q. Will you get them Mr. Ledbetter? I show you an envelope containing a number of signed membership applications and ask you if you're familiar with these papers?

A. I am.

[fol. 139] Q. Will you state whether or not they are the signatures of the employees at the plant?

A. I will.

Q. And they constitute how many signed applications?

A. 179.

Q. The applications as identified by the witness we offer

in evidence marking the group, sir, as D-2 which I will keep in this sealed envelope.

Cross-examination:

By Mr. Pitts: Counsel for Plaintiff.

Q. Mr. Ledbetter, as I recall your testimony, you said you worked with the employees around the mill there from October or November up until the first of March, is that right?

A. Yes, that's right.

Q. In contacting various ones of them and organizing them etc.?

A. Yes.

Q. Well, during that period of some four months, Mr. Ledbetter, did you learn that Mr. S. C. Griffith was the General Manager of the Alexandria plant?

A. No. I didn't.

Q. Did you make any effort to learn who the General Manager was?

A. No, because a manager can't belong to a union so naturally I wouldn't hunt him up.

Q. On the day you talked to Mr. Fowler, did you know Mr. Griffith was out of town?

A. I had been informed to that effect.

Q. That's all.

Redirect examination:

By Mr. McCain: Counsel for Defendants.

Q. Mr. Ledbetter, after you reported back to the local union, the group, the results of your conversation with Mr. Fowler, what action did they take?

[fol. 140] A. They taken a vote.

Q. And what was the vote for?

A. To strike for recognition.

Q. And when the pickets were set up around the plant on March 1, 1954, why were they set up?

A. They had voted to strike and they struck on March 1st.

Q. Because of what reason?

A. For recognition.

Q. Of what?
A. The union.
Q. As a bargaining agent at the plant?
A. That's right.
Q. For the employees?
A. That's right.
Q. That's all I have, sir.
Witness excused.

By Mr. McCain: The defense rests.

[fol. 141] Mr. George Fowler called in rebuttal on behalf of plaintiff.

Objection by Mr. McCain: I make a general objection to the testimony of this witness as he intends to prove a lack of notice of the company of the intentions of the union and, therefore, the picketing is illegal for the simple reason, as I stated before, the pleadings do not show they raised any question as to the propriety or legality of the strike or picketing because of failure to give any notice to the company.

By the Court:

Objection overruled.

By Mr. Pitts:

Counsel for Plaintiff.

Q. You live in Alexandria do you Mr. Fowler?
A. Yes, sir.
Q. How long have you lived here?
A. Twenty-six years.
Q. Are you employed by the Arkansas Oak Flooring Company?
A. I am.
Q. How long have you been with the company?
A. Off and on since about 1922.
Q. You presently employed in the Alexandria plant?
A. Yes, sir.
Q. What are your duties at the plant, Mr. Fowler?
A. Well, my title is Assistant Manager but I'm in charge of production, manufacturing.

Q. Mr. Fowler, do you have anything to do with policy making in connection with wages, hours, etc.?

A. Absolutely none. That's all fixed at the Pine Bluff office.

Q. You've heard Mr. Ledbetter testify about having a conversation with you sometime during the week preceding March 1st. Tell us just what happened.

A. Well, it was about a quarter to one, possibly twelve minutes of one, when I got back to the plant. I'd seen Mr. Ledbetter just as I went to dinner so when I got back—I usually take one of the shipping clerks and the lumber in-[fol. 142]inspectors to lunch. So they got out of the car and he walked around the car. I asked him if he wanted to see somebody. He said, "Yes. I want to see you." Pulled out his credentials and I looked at it. Saw United Mine Workers and he said, "I want to call a meeting." I said "not with me". I said, "Your organization is not recognized by the National Labor Relations Board", and he said, "Well, that's a matter of opinion."

Q. And what else did you tell him?

A. I told him, I said, "If you want to negotiate, I suggest you call the Pine Bluff office."

Q. Did you mention Mr. Smith's name?

A. I believe I did. I wouldn't be positive but I believe I did.

Q. You didn't lead him to believe that you had authority to deal with him?

A. Absolutely none.

Q. And is that the only time Mr. Ledbetter ever talked to you?

A. That's the only time I've ever seen the gentleman until just a second ago.

Cross-examination.

By Mr. McCain: Counsel for Defendants

Q. Mr. Fowler, do you remember what day this was?

A. I believe on Wednesday at noon, about a quarter 'til one.

Q. And that was the Wednesday before the strike?

A. Yes, sir. I'm almost positive it was Wednesday. I wouldn't swear to it.

Q. And that was at your Alexandria plant—your conversation?

A. Yes, sir.

Q. Mr. Griffith was not in town then?

A. No, sir. He was over in Texas.

Q. And you were in charge of the plant at that particular time?

A. I was in charge of the plant, the manufacturing end. I had no jurisdiction over the office or the management of the plant itself.

[fol. 143] Q. When Mr. Ledbetter came up to you, he did show you his credentials?

A. He showed me his credentials.

Q. And you looked at them?

A. I glanced at them. I saw enough to know he was with the United Mine Workers, yes.

Q. I think you said you told him that this particular union was not recognized by the Labor Board?

A. By the National Labor Relations Board, yes.

Q. How did you know that?

A. Well, I read it in several cases, and have had occasion at one time, that there was a case in Shreveport where they tried to organize.

Q. Well, you knew they were organized in your plant ~~didn't~~ you?

A. I did know that they were trying to organize, yes, before Christmas. Some of the white men had told me.

Q. And you had discussed it, I assume, with other of the officers or Mr. Griffith or Mr. Smith, hadn't you?

A. Well, I don't believe I ever discussed it with Mr. Smith, but Mr. Griffith and I had a little discussion about it.

Q. Did Mr. Griffith inform you at any time that the Mine Workers were not recognized?

A. He did not.

Q. Did you discuss it with him at any time?

A. No sir.

Q. But you told him that you would not negotiate with the Mine Workers?

A. I told him that I would not and suggested that he call the Pine Bluff office and he said he would. That was the last word I had with him.

Q. Did you tell him he could do anything he saw fit in the matter?

A. No, sir, I did not.

Q. You're not positive about whether you told him to call Mr. Smith or not?

[fol. 144] A. I wouldn't be positive. I suggested he call the Pine Bluff office. I knew he would have to talk to Mr. Smith if he talked to anybody.

By Mr. Pitts:

Plaintiff closes.

Testimony concluded.

[fol. 145] Stenographer's Certificate to foregoing transcript omitted in printing.

[fols. 146-147] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 148] IN THE NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

City of Alexandria,
Thursday, March 25, 1954.

The District Court, civil section, met this day according to law, His Honor Judge Allen V. Hundley presiding. Previous minutes were read and approved.

MINUTE ENTRIES

43,739—Arkansas Oak Flooring Company vs. United Mine Workers of America. Judgment read and signed. see decree. Written motion on counsel for defendants filed praying for a devolutive appeal. Motion for devolutive appeal granted, returnable to the Honorable Supreme Court of Louisiana, New Orleans, Louisiana, on or before April 16th,

1954, devolutive appeal bond fixed in the sum of $500.00. Case set for trial for June 24, 1954.

* * * * * * * *

Court then adjourned according to law.
Approved: Allen V. Hundley, Judge.

STATE OF LOUISIANA,
Parish of Rapides:

City of Alexandria,
Thursday, June 24, 1954.

The District Court, civil section, met this day according to law, His Honor Judge Walter M. Hunter presiding. Previous minutes were read and approved.

* * * * * * * *

43,739—Arkansas Oak Flooring Company vs. United Mine Workers of America, et al: This cause coming on this day, pursuant to regular assignment, was called and trial had. Answer filed. The following stipulation entered: "The Plaintiff re-offers all evidence previously taken in this case on the trial of the preliminary injunction and submits the matter to the Court on this vendice. Defendant likewise [fol. 149] offers all the evidence previously taken in this case on the Exceptions and otherwise, and submit the matter for decision on the merits. It is further agreed that the record or transcript already made up in this Court and sent to the Supreme Court on the hearing of the preliminary injunction may be used in connection with the appeal of the judgment rendered this day to the Supreme Court, and shall constitute a part of the record on this appeal without the necessity of retyping the previous record." Judgment rendered, read and signed, see decree. Upon motion of counsel for the defendants, a devolutive appeal was prayed for and granted, returnable to the Honorable Supreme Court of Louisiana, New Orleans, Louisiana, on or before August 23, 1954, devolutive appeal bond fixed in the sum of $500.00.

* * * * * * * *

Court then adjourned according to law.
Approved: Allen V. Hundley, Judge.

union which is not in fact entitled to recognition, and from the hazard of denying recognition to an uncertified union which actually is validly authorized to represent an appropriate unit * * *." Pages 13 and 14. (Emphasis supplied.)

However, in Section 9 Congress also precluded investigation by the Board of any question concerning the representation of employees raised by a labor organization, as well as the issuance of any complaint with respect to an unfair labor practice at the behest of a labor organization until that organization had complied with the provisions of subsection (f) with respect to the filing of detailed information relative to the Union's organizational structure. Additionally, and in furtherance of "its policy of wholly eradicating and barring from leadership in the American labor movement, at each and every level, adherents to the Communist party and believers in the unconstitutional overthrow of our Government,"[5] Congress adopted Section 9 (h) which provides that "*No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section,*[6] * * * [fol. 175] and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10,[7] *unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not*

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[5] N. L. R. B. v. Happ Bros. Co., 196 F. 2d 195. See, also, American Communications Assn. v. Douds, 339 U. S. 382, 94 L. ed 925, and particularly the concurring opinion of Justice Jackson at 94 L. ed 956.

[6] Authorizing the Board to investigate a question of representation upon the petition of the employer, employee, or labor organization, as above described in the petition.

[7] Authorizing the investigation through the procedure set out in Section 10 (b) the unfair labor practices as listed in Section 8.

[fol. 150]. [File endorsement omitted]

IN NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

ANSWER—Filed June 24, 1954

To the Honorable the Judges of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana:

Now into Court, through undersigned counsel, come all parties made defendant in the above and foregoing matter for to answer to the petition herein on the merits and particularly, but not exclusively, to the petition and prayer to the extent that petitioner seeks a permanent injunction, and reserving all rights under the exceptions previously filed herein, respectfully aver:

Defendants admit the introductory paragraph of the petition.

1. Defendants admit that the United Mine Workers of America is an unincorporated labor organization, but deny that James Ledbetter is its agent or representative for process or legal service and deny that said United Mine Workers of America is within the jurisdiction of this Court.

2. Defendants admit the allegations of Paragraph 2 of the petition, but deny that James Ledbetter is temporarily residing in Rapides Parish, Louisiana.

3. Admitted.

4. Defendants deny the allegations of paragraph 4 of [fol. 151] the petition, except as hereinafter admitted.

5. Defendants deny paragraph 5 of the petition, except as hereinafter admitted.

6. Denied.

7. Denied.

8. The allegations of paragraph 8 of the petition are denied except that defendants admit and aver that there is a bona fide labor dispute existing between the petitioner, as employer, and defendants.

9. Denied.

10. Denied

11. Denied.
12. Denied.
13. Denied.
14. Denied.

And further answering defendants aver:

15

(a) That there is a bona fide labor dispute between petitioner as employer and all defendants and other employees of petitioner.

(b) That approximately 182 of petitioner's employees in the plant, or approximately 80 percent of said mill employees have designated District 50, United Mine Workers of America, a separate unincorporated labor organization as their bargaining agent at petitioner's plant.

(c) That petitioner, through its officers, has been so informed and defendants and other employees of petitioner have sought to have said labor organization recognized as the bargaining agent for said employees, and defendants and other of said employees have sought to negotiate with the employer on working conditions and terms, through said representative, and said petitioner has refused to negotiate or meet with its employees.

[fol. 152] (d) That a picket line was set up near petitioner's plant, on public property, on March 1, 1954 by a large majority of the employees of petitioner's plant for obtaining recognition of the plant employees selected bargaining agent.

(e) That said picket line at no time consisted of more than three pickets; that it was peaceful; that there were no threats or violence to anyone at any time in connection with this matter.

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Defendants further aver also, or in the alternative, that this matter involves an unfair labor practice and representation, growing out of a labor dispute in the field of interstate commerce and within the exclusive jurisdiction of the National Labor Relations Board.

union since the effective date of the amendments to the Act, even though it won a victory at the polls before that date; it has declined to place such a union on the ballot, as intervenor, in an election held at the instance of a petitioning labor organization that has complied with Sections 9 (f) and (h), even though its intervention at the hearing was otherwise proper; and *it has declined to order an employer to bargain collectively with a non-complying union*, except upon compliance by the union within a specified period.

[fol. 177] "Here the petitioner is not a complying labor organization, but the employer. The fact remains that the question concerning representation, although brought to the Board's attention by the employer's own petition, was 'raised by a labor organization.' It was raised by the affirmative claim, here made both by the Fur Workers, CIO, and by the Adirondack Workers, that a labor organization represented a majority of the employer's employees within an appropriate unit. * * * *Although it is the employer's petition in such a case that sets the Board's machinery in motion, it is an individual's or a labor organization's initial claim for recognition that makes it possible for the employer to invoke that machinery.* If, as here, a labor organization that presented a claim for recognition has not complied with the provisions of Section 9(f) and (h), we would no more implement the policy of Congress if we placed it on the ballot than if we were to do so in a case in which it, or another labor organization, filed the formal papers with the Board. *If a non-complying union were placed on the ballot and happened to win the election, no one could expect the Board under the amended Act to issue a certification that would run in its favor.* But a victory at the polls, even without later formal certification, would confer certain moral and practical advantages on the non-complying union which the basic policy of Congress appears to discountenance. Such a result can be averted with certainty only by our declining to place a non-complying union on any ballot, unless there are absolutely compelling statutory or policy reasons for doing so.

"In our opinion, *the fact that a petition has been filed by an employer rather than by a labor organization does not*

Defendants aver that the right to picket peacefully, (as conducted herein by defendants and other employees of the petitioner), is protected by the First and Fourteenth Amendments to the Constitution of the United States and Article I, Section 3 of the Constitution of Louisiana.

And defendants also aver that this right to peacefully picket being concerted action by employees involving their employer engaged in interstate commerce, is action protected by the National Labor Relations Act enacted under the Commerce Clause of the United States Constitution and is, therefore, beyond State regulation or restraint.

And defendants further aver that this Honorable Court has no jurisdiction under the statutory law of the State of Louisiana to issue a permanent injunction herein.

Wherefore, defendants pray for judgment in their favor, denying a permanent injunction and denying any relief sought by petitioner; and that petitioner's suit be dismissed [fol. 153] at its cost and for all general and equitable relief, and for all costs.

(S.) James I. McCain, 818 Whitney Bldg., New Orleans, La., Attorney for defendants.

Dated June 22, 1954.

Duly sworn to by James I. McCain. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 154] In Ninth Judicial District Court Parish of Rapides, State of Louisiana

[Title omitted]

Stipulation as to Evidence—Filed June 24, 1954

The Plaintiff re-offers all evidence previously taken in this case on the trial of the preliminary injunction and submits the matter to the Court on this evidence.

provide such compelling reasons. The question concerning [fol. 178] representation remains a question 'raised by a labor organization' which has made a claim for recognition as bargaining representative. An employer petition, like a union petition, seeks to resolve the question of who, if anyone, is the true bargaining representative of the employees. Either sets in motion the same investigative process; the same result, either of certification or of dismissal, may flow from either; and a Board election conducted on the basis of either will now preclude another Board election for 12 months. This similarity between employer and union petitions, both in purpose and in result, points strongly to the conclusion that a non-complying union should derive no more advantage from the one than it does from the other. The statutory language supports the same conclusion. Sections 9(f) and (h) speak in terms of questions raised, rather than of petitions filed, by labor organizations. An employer petition must allege that he has been presented with a claim by an individual or a labor organization for recognition as bargaining representative of his employees. The distinction which Congress intended to draw by the words 'raised by a labor organization' is, we believe, between a claim for recognition made by a union and a similar claim by an individual or individuals, not between a union petition and an employer petition filed with the board. * * *

"* * * *We believe* * * * *that the exclusion of non-complying unions from the ballot in cases where employers are the petitioners is more nearly consistent with the supervening policy of denying the imprimatur of Government to such labor organizations.*" To this same effect are the later decisions in Staten Island Cleaners, Inc., 93 NLRB 63; and The Federal Refractories Corp., 100 NLRB 35. (All emphasis has been supplied.)

[fol. 179] The Act permits individual employees, as well as the employer, to petition the Board with respect to questions concerning representation and unfair labor practices, but the United States Court of Appeals for the Fifth Circuit, in N.L.R.B. v. Happ Brothers Co., 196 F. 2d 195, held it would not permit individual employees, bringing charges of unfair labor practices against an employer, to thus "front" for a non-complying union that was without access

Defendants likewise offer all the evidence previously taken in this case on the Exceptions and otherwise, and submit the matter for decision on the merits.

It is further agreed that the record or transcript already made up in this Court and sent to the Supreme Court on the hearing on the peliminary injunction may be used in connection with the appeal of the judgment rendered this day to the Supreme Court, and shall constitute a part of the record on this appeal without the necessity of re-typing the previous record.

(S.) James I. McCain, Attorney for all Defendants.

[File endorsement omitted.]

[fol. 135] In Ninth Judicial District Court, Parish of Rapides, State of Louisiana

No. 43,739

Arkansas Oak Flooring Company

versus

United Mine Workers of America, et al.

Judgment on Permanent Injunction—June 24, 1954

This cause having come on for trial on the merits, trial being regularly had and the court being of the opinion that the plaintiff is entitled to the relief prayed for, for reasons orally assigned,

It is, therefore, ordered, adjudged and decreed that a permanent injunction issue herein enjoining and prohibiting the United Mine Workers of America, its officers, members and employees, and the other defendants herein, James Ledbetter, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Euiler, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, and any and all other persons acting for or in behalf of said defendants, from picketing on, near or about plaintiff's

to the board's facilities. It accordingly refused to enforce the Board's directive to the employer, brought at the instance of an employee, ordering it to cease and desist from the unfair labor practices there charged, stating it would not thus permit the great purpose of the amendment requiring the filing of non-communist oaths to be "rendered nugatory and destroyed" by the subterfuge of or resort to the simple expedient of employing an individual to "front" for non-complying unions.[8]

In Labor Board v. Highland Park Mfg. Co., 341 U.S. 322, 95 L. ed. 969, the Supreme Court of the United States, holding that the Board was without authority to order an employer to bargain with a local union whose affiliate or parent union had not filed the requisite non-communist affidavits provided for in the Act, said: "*The Board is a statutory agency and, when it is forbidden to investigate or entertain complaints in certain circumstances, its final order could hardly be valid.*" See, additionally, the annotations at 95 L. ed. 979 and 97 L. ed. 415. (Emphasis supplied.)

It necessarily follows that inasmuch as the Union in the instant case has, by its own admission and as certified to by the National Labor Relations Board, failed and refused to comply with the provisions of Sections 9(f) (g) and (h) [fol. 180] of the 1947 amendment, the Board is without jurisdiction to entertain any question with respect to its protestations of majority representation and/or unfair labor practices; for it is not only ineligible for certification, but cannot compel the employer to recognize it as the representative of its employees. The plaintiff's refusal to recognize the Union was, therefore, not in violation of any obligation imposed by law, and the picketing in furtherance of this unlawful objective was the employment of economic pressure illegally for the purpose of causing the employer irreparable injury for which it has no adequate administrative or legal remedy—injurious conduct which the state has jurisdiction to relieve. See, Stewart-Werner Corp. v.

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[8] The picketing in the instant case is tantamount to organized activity engaged in for the purpose of compelling the employer to "front" for the Union in a representation matter before the Board.

property or approaches thereto just off Texas Avenue in the City of Alexandria, Rapides Parish, Louisiana.

Judgment rendered in open court on this the 24th day of June, A.D. 1954.

(S.) Allen V. Hundley, Judge.

[File endorsement omitted.]

[fol. 156] IN NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

MOTION AND ORDER OF APPEAL—Filed June 24, 1954

To the Honorable the Judges of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana:

On motion of United Mine Workers of America and all other parties made defendant in the above and foregoing matter, through their attorney, James I. McCain, and on suggesting to the Court that defendants are aggrieved by the judgment for a permanent injunction herein rendered on the 24th day of June, 1954 and signed on the 24th day of June, 1954, said judgment being rendered in favor of plaintiff; that the said judgment is contrary to the law and the evidence, and that movers desire to appeal devolutively therefrom to the Supreme Court of the State of Louisiana,

It is ordered that a devolutive appeal be granted to the said United Mine Workers of America and all defendants in this matter, returnable to the Supreme Court of the State of Louisiana, on the 23rd day of August 1954, upon said parties furnishing bond with good and solvent security in the sum of (blank) June 24, 1954.

(S.) Allen V. Hundley, Judge.

Service accepted, citation waived, all rights reserved. 6-24-54. John L. Pitts, Atty. for Pltf.

[File endorsement omitted.]

National Labor Relations Board, 194 F. 2d 207;[9] Goodwins, Inc. v. Hagedorn, 303 N. Y. 300, 101 N. E. 2d 697; Fulford v. Smith Cabinet Mfg. Co., 118 Ind. App. 326, 77 N. E. 2d 755; Cordey China Co. v. United Mine Workers of America, 25 N. J. Super. 514, 96 A. 2d 696; and Simmons v. Retail Clerks Union Local 779, 14 Labor Cases 73,335.

Counsel for appellants, with respect to the third specification of error urged, concedes in brief that since the trial [fol. 181] of this case on the merits the Douglas Public Service and Godchaux Sugars, Inc., cases have been decided adversely to his contention that the state is without right under Louisiana law to enjoin peaceful picketing, but he contends that in so holding we violated a cardinal rule of constitutional construction in that we invalidated the state's anti-injunction statute although such conclusion was unnecessary, inasmuch as we found violence occurred during the course of both of these labor controversies.

Counsel is in error in this statement, for we declared in the Douglas Public Service case (approved in the Godchaux case) in clear and unequivocal language that "* * * any act of the legislature, whether procedural or substantive, that infringes or trenches upon the constitutional prerogatives of the courts, cannot stand;" consequently, that

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[9] In this case officials of a non-complying union, acting in their individual capacities, sought to charge the employer with an unfair labor practice because of the employer's refusal to permit the circulation of petitions on its property in connection with an attempt to organize the employees. In concluding such conduct did not constitute an unfair labor practice by the employer, the United States Court of Appeals for the Fourth Circuit said: "There is nothing in the Labor Management Relations Act which requires an employer to permit his premises to be used by employees for activities in contravention of the spirit and purpose of the act. The company was under no obligation to recognize or deal with the (non-complying Union) even if it had obtained a majority, and, a fortiori, was under no obligation to permit adherents of the (Union) to use its premises * * * in carrying on a campaign in behalf of the (Union)." (Brackets added.)

[fols. 157-158] Bond on appeal for $500.00 filed June 26, 1954; omitted in printing.

[fols. 159-161] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 162] IN SUPREME COURT OF THE STATE OF LOUISIANA

No. 41797

ARKANSAS OAK FLOORING COMPANY, Plaintiff and Appellee,

versus

UNITED MINE WORKERS OF AMERICA, et als., Defendants and Appellants

MOTION TO CONSOLIDATE APPEALS AND ORDER THEREON—August 16, 1954

On motion of James I. McCain, Attorney for defendant and appellants, it is respectfully suggested to this Court:

1

That an appeal was filed herein in the above matter on April 12, 1954, which constituted an appeal from a judgment rendered by the Ninth Judicial District Court for the Parish of Rapides and which was a judgment refusing appellants a preliminary injunction in this matter.

2

That on July 26, 1954, there was filed by appellants a second appeal in this same case under the same title, being No. 44983 of the docket of this Court, and which record constituted an appeal by appellants in this same matter from a judgment by the same Court, refusing appellants a permanent injunction.

3

That both appeals are in the same case and involve the same evidence and testimony and constitute one and the same matter, and mover respectfully prays that these two

the "provisions of the so-called anti-injunction act that seek to limit the jurisdiction of the district courts of this state in granting immediate relief, if that is necessary for the protection of rights and property, are illegal and ineffective." It necessarily follows that the doors of the courts of this state cannot be closed to the plaintiff here upon the showing made that irreparable injury was being suffered by it as a consequence of the unlawful activities of the defendants.

The final contention—that the restraint of the picketing in this case is an infringement of the freedom of speech guarantees of the Federal and state constitutions—is also untenable inasmuch as we have found as a fact that the picketing here engaged in is for an unlawful objective. Hughes v. Superior Court of California, 339 U. S. 460, 70 S. Ct. 718, 94 L. ed. 985; International Brotherhood of [fol. 182] Teamsters v. Hanke, 339 U. S. 470, 70 S. Ct. 773, 94 L. ed. 995; Building Service Employers International Union v. Gazzam, 339 U. S. 532, 70 S. Ct. 784, 94 L. ed. 1045; Richman Brothers Co. v. Amalgamated Clothing Workers, 116 N. E. 2d 60, affirmed by the United States Supreme Court on April 4, 1955; W. E. Anderson Sons Co. v. Local Union No. 311, 156 Ohio St. 541, 104 N. E. 2d 22; as well as Cordey China Co. v. United Mine Workers of America, 95 A. 2d 696, and the authorities therein cited.

In disposing of this issue adversely to the contention of the defendants in the recent decision in Godchaux Sugars, Inc. (supra), we observed:

"It is true that the United States Supreme Court has likened picketing to speech, but this sweeping analogy as first enunciated in Thornhill v. Alabama, 310 U. S. 88, has since been greatly refined and restricted. In Hughes v. Superior Court of California, 339 U. S. 460, 70 S. Ct. 718, 94 L. ed. 985, the United States Supreme Court * * * said: '"(T)he domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states," * * * no doubt includes liberty of thought and appropriate means for expressing it. But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing "is more than free speech, since it involves patrol of a particular locality and since the very presence

appeals be consolidated for presentation and argument in this Court.

James I. McCain, Attorney for Defendant and Appellants.

[fol. 163] ORDER

Considering the above and foregoing Motion

It is hereby ordered that the appeals in this case No. 41797 and No. 41983 be consolidated on the docket of this Court for the purpose of presentation and argument.

New Orleans, Louisiana, August 6, 1954.

(Signed) Joe B. Homiter, Assoc. Justice.

Certificate of service (omitted in printing).

[fol. 164] IN SUPREME COURT OF THE STATE OF LOUISIANA

[Title omitted]

MOTION FOR PREFERENCE—Filed April 22, 1954

On motion of James I. McCain of counsel for Appellants and on suggesting to the Court that mover desires that this cause be placed on the preference docket:

It is ordered that the above entitled and numbered cause be placed on the preference docket of this Court.

(Signed) Jno. B. Fournet, Chief Justice.

[File endorsement omitted.]

(Certificate of service omitted in printing.)

[fol. 165] IN SUPREME COURT OF LOUISIANA

Nos. 41,797 and 41,983

ARKANSAS OAK FLOORING COMPANY

v.

UNITED MINE WORKERS OF AMERICA, et al.

Appeal from the Ninth Judicial District, Parish of Rapides, Hon. Allen V. Hundley, Judge

OPINION—April 25, 1955

Hamiter, J., concurs in the decree. Hawthorn, J., dissents in part with written reasons.

FOURNET, Chief Justice:

The United Mine Workers of America, District 50, and twelve other named defendants [1] are appealing devolutively from the judgments of the lower court granting to the plaintiff, Arkansas Oak Flooring Company, a preliminary and permanent injunction [2] restraining them "and any and all other persons acting for or on" their behalf "from picketing on, near or about plaintiff's property * * * just [fol. 166] off Texas Avenue in the City of Alexandria, Rapides Parish, Louisiana."

The facts pertinent to a decision of the issues raised in this case are, substantially, that the Arkansas Oak Flooring Company (admittedly engaged in interstate commerce), with principal offices in Pine Bluff, Arkansas, operates a sawmill and flooring plant near the City of Alexandria, Louisiana, where it is engaged in the business of manu-

[1] James L. Ledbetter, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb, and John Doggins.

[2] No. 41,797 on the docket of the court is the appeal taken from the judgment granting the preliminary injunction, and No. 41,983 is the appeal taken from the judgment granting the permanent injunction.

facturing lumber and oak flooring. The employees in this plant had been unorganized for a period of some four years and there was no dispute between the employer and employees with respect to working conditions, wages, or hours, when, in October or November of 1953 James L. Ledbetter, claiming to represent the United Mine Workers of America, District 50—a Union that has admittedly failed and refused to comply with the requirements of Section 9 (f) (g) and (h) of the Labor Management Relations Act of 1947[3]—arrived in Alexandria for the exclusive purpose of contacting the plaintiff's employees, with the avowed intention of ultimately compelling recognition of this Union as the bargaining representative of such workers. Purportedly having authority from some 174 of the plaintiff's 225 employees, exclusive of officers, inspectors, and foremen, who had allegedly joined the Union, Ledbetter, [fol. 167] on February 23, 1954, at a time when he knew the plant manager was out of the state, presented his demand for recognition of the Union to the assistant manager, who advised Ledbetter that inasmuch as the Union was not recognized by the National Labor Relations Board, he would not recognize it, and further advised that if Ledbetter desired to negotiate further he would have to take the matter up with the company officials in Pine Bluff, where all matters of policy were handled. Instead, a strike was called to compel recognition of the Union on March 1, 1954, and the picket line thrown up in connection therewith caused a large number of the plaintiff's employees to refuse to cross the line and report for work, with the result that the employer's operations were greatly curtailed and irreparable loss was sustained.

The company thereupon secured a temporary restraining

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[3] Section 9(f) and (g) require that a Union seeking to be declared the bargaining agent of employees file with the Secretary of Labor certain information relative to its organizational and financial structure, and Section 9 (h) requires the filing of affidavits with the National Labor Relations Board in which the Union's officers deny membership in or affiliation with the Communist Party and deny belief in the overthrow of the United States government by force.

order with a rule to show cause why a preliminary injunction should not issue, and, ultimately, a permanent injunction be granted. On the return day, the Union excepted to its citation through Ledbetter, contending that as an unincorporated labor organization with no corporate existence in Louisiana it could not be impleaded into court under its group or company name; further, that the court had no jurisdiction rationae personae since Ledbetter was not authorized to receive process for the members of the group or to stand in judgment for the Union. On this same day, all defendants excepted to the petition on the ground of vagueness, and also to the court's jurisdiction rationae materiae, the latter exception being predicated on the assertion that the National Labor Relations Board alone has jurisdiction to halt the peaceful picketing of an employer whose business is affected by interstate commerce. [fol. 168] In answer, all defendants generally denied the allegations of the petition, reiterated the matters set out in the exceptions, and asserted, additionally, that the right to strike and to picket peacefully as an expression of free discussion is protected by the First and Fourteenth Amendments to the Constitution of the United States, and Section 3 of Article I of the Constitution of Louisiana.

The exceptions were overruled and the preliminary injunction granted, which, following trial on the merits, was made permanent. These appeals followed.

Counsel for the defendants is contesting here, under specifications of error set out in brief, the correctness of the trial judge's ruling with respect (1) to the citation of the Union in its association name and through Ledbetter, (2) the state's assumption of jurisdiction rationae materiae despite the fact the plaintiff is engaged in interstate commerce and an unfair labor practice is involved, and (3) in any event, the right of a state court, under Louisiana law, to enjoin peaceful picketing of an employer's plant to secure recognition as the employee-bargaining representative.

The contention of the appellants that the court had no jurisdiction of the Union rationae personae since Ledbetter was without authority to receive process of citation for the group or to stand in judgment is based upon the generally recognized rule that obtains in the common law that in the absence of an enabling or permissive statute an un-

incorporated voluntary association is not capable of being sued in its common or association name. But this rule is [fol. 169] untenable in Louisiana under the express provisions of the Revised Statutes in this state which provide that "Any voluntary association may be sued on any obligation incurred for the benefit of such association, in the name of the said association and all legal services in such matters shall be made upon the managing official of such voluntary association and in the absence of such official, then upon any other official, and in the absence of all officials, then upon any member of such association." [4] The fact that Ledbetter was not authorized to accept citation in the instant case is, therefore, of no moment.

As pointed out in the recent case of Godchaux Sugars, Inc. v. Chaisson (No. 41,569 on the docket of the court, handed down January 10, 1955). "To hold that an unincorporated group must be individually named and cited before it is susceptible to restraint would be equivalent to holding that, by subterfuge of unincorporation, group action transcends individual rights and is unlimited and unrestrictable except within the purview of the criminal statute, or that corporations unauthorized by law cannot be restrained from doing irreparable injury except through the process of individual identification." The reason given therefor is that "time is of the essence in the nature of the relief prayed for in this case (and) to require the ascertainment of individual membership of an unincorporated association and thereafter individual citation as conditions precedent to the granting of relief,—and thereby require plaintiffs to gather information almost exclusively within the knowledge of defendants, without whose help it would be [fol. 170] impracticable or perhaps even impossible to gather, and from whom hindrance and obstruction, rather than cooperation, could be reasonably anticipated,—would be tantamount to a denial of relief.

The second, and most important, error allegedly committed by the trial judge, that is, his failure to sustain the plea to the jurisdiction rationae materiae, is predicated upon the theory that this case involves an unfair practice in

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[4] Act of 170 of 1918, which has been incorporated into the Revised Statutes of 1950 as Paragraph 22 of R. S. 13:3471.

a dispute affecting interstate commerce and is, therefore, controlled by the landmark decision in Garner v. Teamsters Union, 346 U. S. 485, 74 S. Ct. 161, 98 L. Ed. 228, holding that such matters are within the exclusive jurisdiction of the National Labor Relations Board.

In the Garner case the Supreme Court of the United States simply gave added emphasis to the well settled jurisprudence that congressional legislation curtails state action in the field intended to be covered and that state action is, within that particular sphere, superseded; consequently, that Congress, by the adoption of the National Labor Relations Act of 1935 (referred to as the Wagner Act), and its amendment in 1947 by the Labor Management Relations Act (known as the Taft-Hartley law), did, with relation to the rights there conferred, place within the jurisdiction of the National Labor Relations Board the enforcement of the rights and privileges there delineated, which enforcement was to be carried out through the administrative scheme therein devised, as supplemented by the judicial remedies prescribed. The court was careful to point out, [fol. 171] however, that the Act "leaves much to the states, though Congress has refrained from telling us how much," leaving it to the judiciary to "spell out from conflicting indications of congressional will the area in which state action is still permissible," and that the Board has no jurisdiction in those zones that are either "governable by the State or * * * entirely ungoverned." As to these spheres, the court has declined to find an implied exclusion of state power and, instead, permits the states to exercise their "historic powers over such traditionally local matters" as injurious conduct which the Board is without express power to prevent, public safety and order and the use of streets and highways, as well as in those cases where the Board "would decline to exercise its powers once its jurisdiction was invoked."

However, the labor activity sought to be restrained in the Garner case was peaceful stranger picketing for the purpose of coercing the employer to compel his employees to join a union—an activity, as demonstrated in the opinion, specifically denounced as an unfair labor practice in the Act. In the instant case the picketing was engaged in for the sole purpose of compelling the employer to recognize

as the legally constituted agent of its employees a union that has no legal status before the National Labor Relations Board because of its failure and refusal to comply with the provisions of the Act requiring the filing of certain information relative to structural and financial matters, as well as non-communist oaths. This is clearly not an act denounced as an unfair labor practice by the amendment of 1947.

Congress, in order to promote the peaceful settlement of labor disputes, in so far as they obstruct the free flow of commerce through strikes and other forms of industrial [fol. 172] unrest, adopted the Act of 1936, and, in 1947, in order to adjust and minimize any differences in the rights granted to unions, employees, and/or employers, amended that act by the adoption of the Labor Management Relations Act.

In Section 9 of this amendment, Congress has, in no uncertain terms, specifically devised the formal mode for the selection and rejection of agents or representatives. Paragraph (a) of the section provides that "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." Under this same section, an employer, if in doubt as to the majority claimed by a unit, can petition the Board for certification of the legally constituted representative, whether one or more unions claim to be the bargaining agent of the employees as defined in Section 9 (a) [Section 9 (c) (1) (B)], *and this certification can only be granted following an election by secret ballot conducted by the Board in accordance with its rules as promulgated in conformity with the provisions set out in the Act.* Section 9 (c) (1). The Board is, therefore, the only administrative agency with authority to certify the proper bargaining agent in a business affected by interstate commerce. It is, additionally, the only agency that has the machinery for conducting the elections that determine that question.

Newman, in his work on "The Law of Labor Relations," gives us the following excellent analysis of the historical

[fol. 173] background of these provisions, as well as their effect:

"The problem of whether a union is the proper bargaining representative of the group of employees for whom the union purports to speak arises when the union asserts that it constitutes the representative body with which the employer is obliged to bargain. If it is, it may bargain for the entire group, by virtue of the cardinal principle that the representatives selected by the majority of the employees shall be the exclusive representatives of all the employees. Under the Wagner Act of 1935 there was no way for the employer to test the validity of the union's claim by obtaining a ruling of the Board on the authenticity of the signature cards, possible withdrawals of authorizations for the union to represent the individual employees, or the absence of coercion by the union organizers against the employees to induce them to sign the authorization. There was no provision for a certification by the Board of the bargaining representative at the request of the employer, although a union might obtain such certification on its request. Under the Wagner Act the employer had to decide for himself, therefore, the difficult questions of fact as to the validity of the proof that the union really was the choice of a majority of the employees * * *. The employer therefore faced the dilemma of refusing to recognize and bargain with the union at the peril that the unit might later be found by the Board to be the proper representative of the employee group, or of dealing with the union at the hazard of finding that a different representative was entitled to recognition. This hardship on the employer was so evident that after a few years of operation under the Wagner Act the Board promulgated an administrative ruling to the effect that where two groups asserted the right [fol. 174] to represent the employees, the employer might demand an election under the direction of the Board before he was obliged to recognize either group. *There was still no relief when only a single group demanded recognition. This evil has now been fully corrected in the Act of 1947,* where by the provisions of section 9 (c) (1) (B) *the employer may petition for an election where any claim for representation is made upon him. The employer is therefore relieved from the hazard of recognizing an uncertified*

a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods." (Emphasis supplied.)

Accordingly, there is, in the record, a letter addressed to the attorneys representing the plaintiff by the regional director of the National Labor Relations Board in which it is stated: "This is to advise that the United Mine Workers of America has not complied with the filing requirements of Sections 9 (f) (g) and (h) of the Act and therefore may not use the services of the Board for either representation or unfair labor practice matters."

Counsel for the defendants conceded during the trial that this Union is non-complying, but argues in brief that "the significance of this means only that the defendant Union cannot use the facilities of the Labor Board to the extent that such are available to complying unions," contending, very ingenuously, that such non-compliance does not render the union an "outlaw," but simply strips it of its right to appeal to the Board for the settlement of matters of representation and unfair labor practices. He insists, therefore, that inasmuch as the employer is not denied the [fol. 176] facilities of the board, it has a duty to negotiate with the union chosen by the majority of its employees and to itself invoke the facilities of the board for the settlement of any grievances it may have with respect thereto.

Counsel is in eror in his appreciation of the significance of these provisions. Shortly after the passage of the 1947 amendment to the Act, in the matter of Herman Loewenstein, Inc., 75 N. L. R. B. 377, the National Labor Relations Board had occasion to consider and interpret the provisions of Section 9 (f) (g) and (h) and it there laid down a policy from which it has never since deviated. Although in that case the matter had been brought to the Board by the employer, the Board, in refusing to take jurisdiction, said:

"*We construe the amended Act to provide, in essence, that a non-complying labor organization shall not be the beneficiary of any Board investigation of a question concerning representation:* For this reason the Board has declined to proceed to hearing or election on a petition filed by a non-complying union; it has declined to certify such a

of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated." * * * Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influences, and it produces consequences different from other modes of communication. The loyalties and responses [fol. 183] evoked and exacted by picket lines are unlike those flowing from appeals by printed word. * * * However general or loose the language of opinions, the specific situations have controlled decision. It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance. * * * "a state is not required to tolerate in all places and all circumstances even peaceful picketing * * *."' "

Furthermore, the right to speak freely, as guaranteed by the constitution, is the right to speak for one's self or as the duly authorized agent of another.

For the reasons assigned, the judgments appealed from are affirmed, at the cost of the appellants.

[fol. 184] Hawthorne, J., Dissenting in Part:

It is my view that the exception to the citation filed in behalf of the United Mine Workers of America, District 50, is well founded; and that the majority is in error in affirming the judgment of the lower court which issued an injunction against the association as such.

United Mine Workers of America, District 50, is an unincorporated labor union or voluntary association. It was named as one of the defendants in this suit and cited only through James L. Ledbetter, one of its members. Being an unincorporated association, it cannot be sued under the existing laws of this state because it has no legal existence distinct from that of its members. *

* Except of course as provided in R. S. 13:3471.

Article 446 of the Civil Code provides that "Corporations unauthorized by law or by an act of the Legislature, enjoy no public character, and can not appear in a court of justice, but in the individual name of all the members who compose it, and not a political body; although these corporations may acquire and possess estates, and have common interests as well as other private societies".

In State ex rel. Doane v. General Longshore Workers, 61 So.2d 747, a suit for mandamus against an unincorporated association, the Court of Appeal for the Parish of Orleans in a well reasoned opinion correctly held that such an association may not, in the absence of statute, sue or be sued in its society or company name. The majority opinion in the instant case cites and quotes Act 170 of 1918, R. S. 13:3471(22), and concludes that this statute authorizes the instant suit. This conclusion is incorrect because this is [fol. 185] not an action or suit on an "obligation incurred for the benefit" of the association. Plaintiff here is seeking an injunction against peaceful picketing, and consequently the statute has no application.

In State ex rel. Doane v. General Longshore Workers, supra, the Court of Appeal gave good and valid reasons in support of its decisions that the statute was not applicable in that case. The reasons given and the authorities cited in the Doane case clearly show that the statute is equally inapplicable to the instant case.

In the case now under consideration the majority opinion relies on certain dicta in the case of Godchaux Sugars, Inc., v. Chaisson et al., No. 41569 on our docket, not yet reported, in support of the proposition that an unincorporated group need not be individually cited to be subject to restraint by injunction. In the Godchaux case the union or voluntary association was not sued in its association name, as is the defendant in the instant case, and in fact was not even a party to the suit. Consequently the Godchaux case is not authority on the citation issue in the instant case.

As I pointed out in my dissenting opinion in Douglas Public Service Corp. et al. v. Gaspard et al., 225 La. 972, 74 So.2d 182, and in my concurring opinion in Godchaux Sugars, Inc., v. Chaisson et al., supra, I do not agree that the procedural requirements of the "Little Norris-LaGuardia Act" are unconstitutional. In the Douglas and

Godchaux cases this court in effect held that the statute was unconstitutional, and that a plaintiff seeking injunctive relief in a labor dispute need not follow the procedural requirements set out in the statute. Some doubt has been expressed by members of the bar as to whether the holding in those cases was limited to the particular facts of each case. The holding in the instant case, however, removes any such doubt. Here the majority is affirming a judgment of the lower court granting an injunction against a labor union for peaceful picketing on a public street, although no acts or threats of intimidation, coercion, violence, fraud, breach of the peace, or trespass were committed. This injunction is issued in the teeth of R. S. 23:841 which provides:

[fol. 186] "No court shall issue any restraining order or temporary or permanent injunction which in specific or general terms prohibits any person or persons from doing, whether singly or in concert, any of the following acts:

"* * *

"(5) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, patrolling any public street or any place where persons may lawfully be, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof * * *."

Consequently the entire act is now as dead as a salted mackerel, made so by judicial proclamation.

However, the holding of the majority on R. S. 23:841 is now the law applicable to cases of this kind, and therefore, for the reasons given in my concurring opinion in the Godchaux case, supra, I am not dissenting on this ground. Nevertheless I am dissenting on the matter of citation which I discussed above.

[fol. 187] IN SUPREME COURT OF LOUISIANA

No. 41,797

and

No. 41,983

(Consolidated)

[Title omitted]

APPLICATION FOR REHEARING

The petition of United Mine Workers of America and 12 other defendants, employees of plaintiff and members of defendant Union, respectfully represents:-

The opinion and decree rendered in this cause, on the 25th day of April, 1955, is erroneous and contrary to the law and evidence, and prejudicial to the interests of applicants, and a rehearing should be granted in this matter for the following reasons, to-wit:

I

This Honorable Court is in error in holding that the employer herein did not have to bargain with and recognize the majority selected bargaining agent of employer's mill employees because the Union had not filed financial and non-communistic affidavits with the Labor Board, and a peaceful picket line set up at employer's plant by the Union and such employees to require such recognition was therefore for an unlawful purpose and subject to State injunction.

[fol. 188] It is to be remembered herein that 179 of the 225 mill employees had properly selected District 50, United Mine Workers of America as their bargaining agent. A demand was made for recognition of said agent for bargaining purposes. This was refused by the employer as the Union had not filed financial and non-communistic affidavits as provided for in the Taft-Hartley Act, 29 U.S.C.A. 159 (f) (g) (h). The Union and the employee members set up a peaceful picket line around the employer's plant on March 1, 1954 which was judicially restrained the next day. The employer was admittedly in interstate commerce. Subsequently, a temporary and permanent injunction were issued by the District Court resulting in these consolidated appeals.

This Honorable Supreme Court makes this issue simple and basic. This Court has held that the picket line (otherwise due protection) was enjoinable solely because the chosen union was not in compliance with the Taft-Hartley Act; that such a union then had no right in any way to require bargaining from the employer and that a picket line seeking to enforce recognition and bargaining was for an illegal purpose and therefore subject to injunction.

The error this Court made was to impose a penalty for non-compliance far in excess of that set up in the Taft-Hartley Act and a penalty in contravention to protected rights guaranteed to non-complying unions by the Taft-Hartley Act.

The only penalty provided by Congress for non-compliance was to deprive such unions of using the processes of the Act to obtain representation elections, (29 U.S.C.A. 159 (f) (g) (h)) and to bring unfair labor practice charges. However, this Court interprets the Act to penalize a non-complying union to the extent that it has no legal bargaining authority or recognition rights.

It is apparent that if an employer had a duty to bargain with a non-complying union properly chosen by a majority of its employees, then a peaceful picket line set up to obtain recognition would be for a legal purpose and not enjoinable. [fol. 189] *That This Honorable Court Was in Error in Its Holding Is Shown by the Fact That Every Federal Circuit Court of Appeals That Has Passed on This Point Is Entirely Contrary to the Conclusion Reached by This Court; and These Federal Decisions Interpreting This Federal Act Have Been Approved by the Federal Supreme Court by the Refusal of Writs of Certiorari.*

This Honorable Court holds that a non-complying union for that fact alone has no bargaining, recognition or picketing right.

The Federal decisions to the contrary are:

NLRB vs. Reed and Prince Mfg. Co.
205 Fed (2) 131
1st Circ., 1953

"The short answer is that Congress has not made compliance with the filing requirements of Sec. 9(f)

(g) and (h) a condition precedent to the obligation of an employer under Sec. 8(a)(5) to bargain collectively with the chosen representative of the employees; such compliance is merely made a condition precedent to invoking the machinery of the Act for the investigation of a question concerning representation, or for the issuance of a complaint charging the commission of unfair labor practices."

Writs were refused by the United States Supreme Court in this case in 346 U. S. 887, 74 S.C.R, 139.

Sec. 8(a)(5) makes it an unfair labor practice for an employer

"to refuse to bargain collectively with the representatives of his employees, subject to the provision of Section 159(a) of this title"

Section 159(a) provides for exclusive bargaining by a Union chosen by a majority of the employees. *There is no other limit placed on this bargaining duty.*

NLRB vs. Pecheur Lozenge Co.
209 F(2) 393, 402
2nd Circ. 1953

"In these circumstances, while failure to file the non-communist affidavits required by Section 9(h) and financial statement and other reports required by Section 9(f) and (g), bars a union from access to the processes of the Board, it does not necessarily destroy the Union's status as bargaining representative for purposes of Section 8(a) 5. West Texas Utilities Co. [fol. 190] vs. NLRB 87 U.S. App. D.C. 179, 184 F. 2d 233, certiorari denied, 341 U.S. 939, 71 S. Ct. 999, 95 L. ed., 1366; NLRB vs. Tennessee Egg Co. 6 Cir., 201 F. 2d 370, reversing 199 F. 2 95 on the authority of NLRB vs. Dant, 344 U.S. 375, 73 S. Ct. 375; NLRB vs. Reed and Prince Mfg. Co., 1 Cir., 205 F. 2d 131, 132. In the latter case, the Court held that "Congress has not made compliance with the filing requirements of 9(f)(g) and (h) a condition precedent to the obligation of an employer under 8(a)(5) to bargain collectively with the chosen representative of the employees."

Writs were refused by the United States Supreme Court in this case in 346 U.S. 887, 74 S.Ct.R. 139.

United Auto Workers v. Wilson Athletic Goods
119 F. Supp. 948

"Plaintiff brings this action under Section 301(a), 29 U.S.C.A. 185 of the Labor Management Act of 1947. The complaint alleges that plaintiff is a voluntary labor organization and that a collective bargaining agreement exists between plaintiff and defendant, the terms of which have been violated by defendant's failure to grant certain employees paid vacations, and that said violation constitutes a breach of the contract. Defendant moves to dismiss the complaint on the following grounds:

* * * * * *

(4) 'Failure to file the non-communist affidavits required in Section 9 of the Act, 29 U.S.C.A. § 159.

* * * * * *

'Furthermore, the union is not required to file the non-communist affidavits in an action of this type. *This requirement is designed merely to deny the facilities of the NLRB to non-complying petitioners, and nowhere in the Act is it set forth as a prerequisite for court action.* This view is confirmed in the case of United Steel Workers of America v. Shakespeare Co., D.C. Mich., 84 F. Supp. 267, 272.

'Defendant's contention in their motion to dismiss, that the court is without jurisdiction for the reason that the plaintiffs failed to comply with Section 9(h) of the Labor Management Relations Act, 29 U.S.C.A. § 159(h), relative to the filing of an anti-communistic affidavit, is without merit for the reason that Section 9(h) of the Act requires such an affidavit only as a condition precedent to proceedings before the National Labor Relations Board.' * * *"

For the foregoing reasons, the motion to dismiss the complaint is hereby denied."

The duty to bargain with the chosen representative of the majority of the employees is not subject to any quali- [fol. 191] fication. Such is shown by Section 7 of the Act.

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively, through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

Section 7 of the Act is not affected by or limited to Section 9(f)(g) and (h).

The right to be represented legally by a union of the employees' choice is not dependent on compliance or certification by the Board.

Faribault Daily News vs. Int. Typo Union
53 N.W. (2)36, 47.

"*Plaintiff contends that the union has not filed the non-communist affidavit required by the federal act, and therefore, not being accredited, has no authority to act.* The Joint Conference Report of the Senate House Committees which reported on the Labor Management Relations act of 1947 states: 'It is to be observed that the primary strike for recognition (without a Board certificate) was not prohibited' In Teller, Labor Disputes and Collective Bargaining (1950 Supp.) Sec. 398.94, the author states: 'primary strike for recognition may be called by a union though it is not certified' citing the Senate and House Conference Report above quoted.

In National Labor Relations Board vs. Dahlstrom Metallic Door Co., 2nd Circ., 1940, 112F(2) 756, 757, 6 L. R.R. Man. 746, 747, the Court said:

> The contention that bargaining was not mandatory until the Board had accredited Local 307 as bargaining agent, is frivolous. *An employer is under a duty to bargain as soon as the union representative presents convincing evidence of majority support.* Under Section 7 of the Act the right exists whether the union has or has not been certified as the bargaining representative of the employees."

National Labor Relations Board v. Kobritz, 193 F. (2) 8(14) 1st Cir., 1951

"But the right of employees to bargain collectively through an exclusive bargaining representative is not conditioned upon an antecedent certification by the Board where, as here, the majority status of the union is clearly established otherwise, and the employer has no bona fide doubt of such majority status, but seeks to delay bargaining negotiations while resorting to various coercive tactics designed to dissipate the union majority support. *National Labor Relations Board* v. *Reed and Prince Mfg. Co.*, supra; National Labor Relations Board v. National Seal Corp., 2nd Cir., 127 F. (2d) 776; National Labor Relations Board v. Franks Bros. Co., 1st Cir., 137 F. (2d) 989, affirmed 321 U.S. 702, 64 S. Ct. 817, 88 L. Ed. 435; National Labor Relations Board v. Harris-Woodson Co., 4th Cir., 162 F. (2d) 97."

[fol. 192] On December 6, 1954, the Federal Supreme Court approved of this *Kobritz* decision in

Brooks v. NLRB
75 SCR 176
Adv. Sheets Dec. 15, 1954.

in which it stated:

". . . Board certification could only be granted as a result of an election, 61 Stat. 144, 29 U.S.C.A. 159(c)(1) though an employer would presumably still be under a duty to bargain with an uncertified union that had a clear majority,—see National Labor Relations Board v. Kobritz I Cir. 193 F. 2d 8."

The right to picket, bargain or obtain recognition is not contingent on certification or compliance. If Congress wished to say recognition or bargaining was legally due only to certified or complying unions, it could have said so. It is sufficient to say that Congress has not said so. Neither has any Federal Court interpreting the Act. All federal decisions have been to the contrary.

The reasoning of this Honorable Court in holding that a

non-complying union and its member employees could not legally picket for recognition was based upon the assertion that the union by non-compliance prevented the employer from having such union certified.

The fallacy of the Court's reasoning (in interpreting this Federal Act) is assuming that the employer had a right to certification in this case.

This Honorable Court held that since the employer could not get certification the union could not get recognition through the means of a peaceful picket line.

But the employer only is entitled to certification when there is a doubt as to majority representation.

If the union had been in compliance the employer would not have gotten certification in this case, as such is only ordered by the Labor Board when necessary to decide a question of majority representation.

[fol. 193] Here 179 of 225 employees had joined the defendant union and signed authorization cards as shown by the record.

There is no absolute right to certification. The Act says in Section 159(c)(1) and (B) (29 USCA 159 (c)(1) and (B))

> (c) (1) Whenever a petition shall have been filed . . .
>
> (B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative . . . .; the Board shall investigate such petition *and if it has reasonable cause to believe that a question of representation affecting commerce exists* shall provide for an appropriate hearing upon due notice. . . . If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election."

As shown by the above, the Board decides as to whether an election shall be called to certify a union. And this will not be done by the Board where the investigation shows that there has been a bona fide and current selection of a representative by prior selection by the employees.

This is shown by the following cases:

United States Office and Professional Workers of America vs. Smiley, et al, 77 F. Supp. 659. Syllabus:

"An employer's insistence in every case upon certification by National Labor Relations Board of proper bargaining agencies is an 'unfair labor practice', and employer has duty to commence bargaining whenever union presents satisfactory evidence of possession of a majority of authorizations in appropriate unit.

The presentation by labor organization of satisfactory evidence of a majority authorization in an appropriate bargaining unit dispenses with necessity of an election, which is directed only where evidence is unsatisfactory."

N.L.R.B. v. Clearfield Cheese Co., 213 F. (2d) 70 (3rd Cir. 1954):

"Where, at time union requested recognition from employer, there were approximately 66 production and maintenance employees, and union had at least 40 authorization cards executed by such employees, employer's refusal to negotiate an agreement, or to recognize the union unless there should be an ordered election was a prohibited refusal to bargain collectively."

[fol. 194] *Beaver Machine and Tool Co., 97 N.L.R.B., 33, 34.*

"As we have frequently held, an employer who, in good faith, doubts the majority status of a union which demands recognition as the bargaining representative of his employees, may lawfully insist that the union prove its majority in a Board-conducted election. But if, in insisting upon an election, the employer is motivated not by a bona fide doubt as to the union's majority standing, but by a rejection of the collective bargaining principle or a desire to gain time in which to undermine the union, the demand for an election is no defense to a refusal-to-bargain charge, if the union in fact represented a majority of employees in an appropriate unit at the time of the refusal to bargain."

When this Honorable Court stated on page 16 of its opinion (which is the gist of the decision) that

> "... for it is not only ineligible for certification, but cannot compel the employer to recognize it as the representative of its employees."

this Court, with all due respect, was patently in error.

While the union cannot compel the employer, through the Board, the Act does not preclude legal demands through a peaceful picket line.

II

This Honorable Court was in error in not finding that an unfair labor practice was charged and therefore sustaining the plea to the State Court's jurisdiction, which charge can be solely litigated before the Labor Board.

In paragraph 10 of its petition the plaintiff alleged:

> "Petitioner shows that the picketing presently engaged in by the defendant union has for its unlawful purpose the forcing of petitioner to interfere with the rights of its employees as expressed by the legislature of Louisiana, by requiring petitioner to deal with the defendant union as a representative of its employees in absence of their selection of said union as their representative."

This is, of course, the identical unfair labor practice charged in Garner vs. Teamsters, 346 U.S. 485 i.e. bringing pressure on the employees in the free exercise of their selection of a bargaining agent through the medium of the employer.

[fol. 195] That picketing to interfere with the employees' selection by pressure on the employer, is an unfair labor practice, is shown by 29 U.S.C. 158 (a) (b).

> 158(b) It shall be an unfair labor practice for a labor organization or its agents:
>
> (2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3).

Subsection (a) (3)

"It shall be an unfair labor practice for an employer . . . (3) by discrimination in regard to hire or tenure of employment *or any term or condition of employment to encourage or discourage membership in any labor organization.*"

The Garner case has been strengthened and reaffirmed by a recent decision in

Weber vs. Anheuser-Busch, Inc., 75 S. Ct. 480
Adv. Sheets April 15, 1955

This matter was decided on March 28, 1955 and has not been considered by this Honorable Court in rendering the decision herein. This *Weber* decision holds that the *charging* of an unfair labor practice defeats State jurisdiction.

"A state may not enjoin under its own labor statute conduct which has been made an "unfair labor practice" under the federal statutes. Such was the holding in the Garner case, supra. The Court pointed out the exclusive primary jurisdiction to pass on the union's picketing is delegated by the Taft-Hartley Act to the National Labor Relations Board.

• • • • • • •

But where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the Federal Act, may be reasonably deemed to come within the protection afforded by the Act, the State court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance."

Of course, whether an unfair labor practice exists in a case, so as to exclude state jurisdiction, depends on what the petitioner alleges. In the above paragraph 10 the petitioner alleged the designated unfair labor practice. The Weber case bars State Court jurisdiction.

[fol. 196] This Honorable Court stated that the union was not on compliance and so was pickeling illegally, which was not an unfair labor practice; therefore this Arkansas Oak case did not involve an unfair practice.

The fallacy of this position is apparent when we see that under the Weber case and Garner case, the existence of an unfair labor practice in a case depends on what the plaintiff alleges and puts into issue. The lack of compliance does not affect the unfair practice alleged. Can it be reasonably said that where a complying union commits acts constituting an unfair labor practice, that the identical acts by a non-complying union do not also constitute an unfair labor practice. The Garner and Weber cases require all unfair labor practice cases be litigated solely before the Labor Board, whether or not the alleged acts are unlawful under State or Federal law. The identity of the union does not alter the alleged unfair labor practice. It is apparent that if District 50 had been in compliance, that this Court would, or should have, maintained the pleaded exclusive jurisdiction of the Labor Board. How can the failure to file complying affidavits affect the proper jurisdiction. Under Section 160 (b) of the Act, a non-complying union is equally amenable to an unfair labor charge hearing before the Labor Board. This is shown by the following cases:

Ex parte, DeSilva; 199 P. (2d) 6:

> "This court there held that the declared intent and purpose of the Labor Management Relations Act, 1947, was to vest exclusive jurisdiction in the National Labor Relations Board over unfair labor practices affecting interstate commerce and to vest in the courts generally jurisdiction only of actions for damages arising out of the commission of such practices, and that the act deprived the superior courts of original equitable jurisdiction in such cases. No distinction may be made here because the National Labor Relations Board had denied the company's petition for certification of a union representative. By the denial the board did not divest itself of jurisdiction to determine whether the defendants were committing unfair labor practices affecting interstate commerce which should be enjoined pursuant to the procedure provided by the act. Its exclusive

[fol. 197] jurisdiction over that matter had not been invoked by the plaintiffs. *And assuming the interstate character of the commerce, the absence of the required reports and affidavits did not affect the jurisdiction of the board to act on such a petition of the plaintiffs had it been filed.*"

Gerry vs Superior Court
194 F(2) 689

"The petitioner makes much of the fact that the defendant unions, as alleged in the complaint in the action, have not filed the required financial reports and affidavits under the 1947 Act which are a prerequisite to the exercise of jurisdiction by the National Labor Relations Board to proceed on a charge of unfair labor practice made by a labor organization. It is claimed that the union's failure to file such reports and affidavits justifies the present action for injunctive relief against them at the suit of the employer. It is a sufficient observation in this respect to say that here it is the employer who is asserting unfair labor practices on the part of labor organizations. The employer as well as the union is now required by the 1947 Act to proceed before the board to obtain appropriate relief from unfair labor practices affecting interstate commerce. The alleged cause of action for injunctive relief presents matters for the board to determine in the first instance pursuant to the exercise of power vested by the National Labor Relations Act as amended by the 1947 Act. There is nothing in the Act as so amended which indicate that these unions may not thus be subject to the appropriate procedure thereby provided. *Inasmuch as the filing of the required documents by labor organizations is not made a prerequisite to the exercise of jurisdiction by the board on a charge of unfair labor practices made by an employer, there is no showing of inadequacy of the available administrative remedy.*"

It therefore follows that having charged an unfair labor practice against the defendant union, the complaining plaintiff in interstate commerce must file such with the Labor

Board. This Honorable Court was in error in not maintaining the plea to the jurisdiction of the District Court.

III

This Honorable Court was in error in holding that the plant employees could not require bargaining through their selected union as such curtailed their protected right of freedom of choice.

[fol. 198] Section 7 of the Taft-Hartley Act provides:

"Employees shall have the right to self organization, to form, join or assist labor organizations *to bargain collectively through representatives of their own choosing*, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection and shall have the right to refrain from any or all of such activities *except* to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 158(a)(3) of this title."

The above section guarantees to employees the right to choose their own bargaining agent; to deal through such exclusive agents and to picket and strike (concerted activities) for the enforcement of this right and rights. *There is only one exception* to these rights, i. e. 158 (a) (3) dealing with bargaining agreements which is not pertinent here. *158 (a)(5) requires the employer to bargain with the chosen representative.*

The right to choose the agent, to bargain through this agent and to picket and to strike to enforce such right, are protected rights under Sections 157 and 158 (a)(5).

A State statute or State injunction cannot qualify, limit or affect these rights.

However, this Honorable Court has nullified the selection of the employees in this case by holding that the Arkansas Oak employees cannot function through District 50, United Mine Workers. This Honorable Court holds that Section 159 (f)(g) and (h) requiring filing of financial

and non-communist affidavits is a limit on the rights guaranteed in 157 and 158 (a)(3). This is not so.

Unfortunately, counsel did not have the Weber v. Anheuser-Busch Inc. case (decided March 28, 1955) when this matter was submitted to this Court. The Weber case shows conclusively in delineating Federal jurisdiction, that the right to peacefully picket for recognition of the selected [fol. 199] agent cannot be qualified by State injunction or statute. This is a protected right immune to restraint by any interpretation of the Federal or State act. In the Weber case the Court stated:

> "The Court has ruled that a State may not prohibit the exercise of rights which the federal acts protect. Thus, in Hill vs. State of Florida, ex rel. Watson, 325 U. S. 538, 65 S. Ct. 1373, 1375 89 L. Ed. 1782, the State enjoined a labor union *from functioning until it had complied with certain statutory requirements.* The injunction was invalidated on the ground that the Wagner Act included a "federally established right to collective bargaining" with which the injunction conflicted. International Union of United Auto, Aircraft and Agr. Implement Workers of America vs. O'Brien, 339 U. S. 454, 70 S. Ct. 781, 94 L. Ed., 978, involved the strike-vote provisions of a State act which prohibited the calling of a strike *until a specific statutory procedure had been followed.* The State act was held to conflict not only with the procedure and other requirements of the Taft Hartley strike provisions *but also with the protection afforded by Section 7 of that Act.* In Amalgamated Association of St. Elec. Ry. and Motor Coach Emp. of America vs. Wisconsin Employment Relations Board, 340 U. S. 383, 71 S. Ct. 359, 95 L. Ed. 364, the State Court issued an injunction under a statute which made it a misdemeanor to interrupt by strike any essential public utility services. It was held that the State statute was invalid in that it denied a right which Congress had guaranteed under Sec. 7 of the Taft-Hartley Act—the right to strike peacefully to enforce union demands for wages, hours and conditions.

* * * * * * *

However, the point is pertinent in our discussion, because even if it were clear that no unfair labor practices were involved, it would not necessarily follow that the State was free to issue its injunction. *If this conduct does not fall within the prohibitions of Sec. 8 of the Taft-Hartley Act, it may fall within the protection of Sec. 7 as concerted activity for the purpose of mutual aid or protection.*

It is apparent from a reading of Section 157 (Sec. 7) that the right to peacefully picket for recognition of the selected union, is not qualified by any filing requirements under the Federal Act. Such was not the intent of Congress as is shown by this Weber case.

[fol. 200] It follows that the decision of this Honorable Court which holds such picketing unlawful until the financial and non-communistic affidavits are filed, is in error.

For the foregoing reasons, applicants pray that after due consideration, a rehearing be granted in this cause and that, finally, the judgments of the District Court be avoided and reversed and judgments be rendered in favor of defendants, and dismissing the suit filed herein and for all general and equitable relief.

Respectfully submitted, Signed James I. McCain, Attorney for Applicants-defendants, 818 Whitney Building, New Orleans, La.

Certificate of service (omitted in printing).

[fol. 201] In Supreme Court of the State of Louisiana

Court was duly opened, pursuant to adjournment. Present, Their Honors: John B. Fournet, Chief Justice, Amos Lee Ponder, Joe B. Hamiter, Frank W. Hawthorne, E. Howard McCaleb, Harold A. Moise, and James D. Simon, Associate Justices.

Minute Entry of Action by the Court Upon Application for Rehearing—May 31, 1955.

Rehearing was refused in the following case: 41,797, 41,983—Arkansas Oak Flooring Co. v. United Mine Workers.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 202] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 203] Supreme Court of the United States, October Term, 1955

No. 227

[Title omitted]

Order Allowing Certiorari.—Filed October 17, 1955

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted. The Solicitor General is invited to file a brief setting forth the views of the National Labor Relations Board.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[File endorsement omitted.]

* * * * * * *

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 227

UNITED MINE WORKERS OF AMERICA, ET AL.,
Petitioners,

v.

ARKANSAS OAK FLOORING COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

CRAMPTON HARRIS,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. _____

UNITED MINE WORKERS OF AMERICA, ET AL.,
Petitioners,

v.

ARKANSAS OAK FLOORING COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

To the Honorables, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

United Mine Workers of America, James L. Ledbetter, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, the petitioners herein, pray that a writ of certiorari be issued to review the final judgment and decree of the Supreme Court of the State of Louisiana entered in consolidated cases Nos. 41,797 and 41,983 in that court, entitled Arkansas Oak Flooring Company versus United Mine Workers of America, et als., affirming the judg-

ments and decrees of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana, temporarily and permanently enjoining the peaceful picketing of respondent's place of business.

OPINIONS BELOW.

The opinions below have not yet been published in any official or unofficial report. The two opinions of the District Court appear at page 87 of Record No. 41,797 and page 9 of Record No. 41,983 and pages 41 and 44 of Appendix A. The opinion of the Supreme Court of Louisiana appears in Appendix A, page 19, and page 1, Proceedings, Supreme Court of Louisiana and *per curiam* denial of rehearing appears in Appendix A, page 41, and page 25, Proceedings, Supreme Court of Louisiana.

JURISDICTION.

The opinion, judgment and decree of the Supreme Court of Louisiana was rendered and entered on April 25, 1955. Appendix A, page 19.

Timely application for rehearing was denied on May 31, 1955. Appendix A, page 41.

The jurisdiction of this court is invoked under Title 28, United States Code, Section 1257(3), which provides in part:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * *

"By writ of certiorari, * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution, * * * or statutes of * * * the United States."

The following cases are believed to sustain the jurisdiction of this court:

American Federation of Labor v. Swing, 312 U. S. 321;

Bakery & Pastry Drivers & Helpers Local 802, etc., v. Wohl, 315 U. S. 769;

Cafeteria Employees Union, Local 302 v. Angelos, 320 U. S. 293;

Garner v. Teamsters Union, 346 U. S. 485;

Weber v. Anheuser-Busch, Inc., 75 S. Ct. 480.

The Supreme Court of the State of Louisiana is the highest court of the State.

QUESTIONS PRESENTED FOR REVIEW.

1. Do Sections 1, 7, 8 (a) (5) and 13 of the Labor Management Relations Act protect the rights of employees engaged in interstate commerce to designate as representative of their own choosing for the purposes of collective bargaining, a labor union which has not complied with Section 9 (f) (g) and (h) of the Act?

2. (a) Is picketing to obtain recognition of a majority designated union representative, which has not complied with Section 9 (f) (g) and (h) of the Labor Management Relations Act, picketing for an unlawful purpose which may be enjoined for that reason by a State Court?

(b) Is it not picketing protected by Amendments I and XIV of the United States Constitution and Sections 1, 7, 8 (a) (5) and 13 of the Labor Management Relations Act?

3. Where an employer engaged in interstate commerce files in a State Court a petition for an injunction against some of his employees and a labor union, which petition alleges:

> "Petitioner shows that the picketing presently engaged in by the defendant union has for its unlawful purpose the forcing of petitioner to interfere with the rights of its employees, as expressed by the legislature of Louisiana, by requiring petitioner to deal with the defendant union as a representative of its employees in the absence of their selection of said union as their representative,"

does it not charge an unfair labor practice under Section 8 (a) (3) and Section 8 (b) (2) of the Labor Management Relations Act and thereby preclude State jurisdiction?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The Constitutional provision involved is the First Amendment, which, in part, provides:

> "Congress shall make no law * * * abridging the freedom of speech * * *." (Excerpt)
>
> *United States Constitution, Amendment I.*

This is made applicable to the states by the Fourteenth Amendment which, in part, provides:

"* * * nor shall any state deprive any person of life, liberty, or property, without due process of law." (Excerpt)

United States Constitution, Amendment XIV.

The sections of the Labor Management Relations Act of 1947 which are involved are: 1, 7, 8 (a) (3), (a) (5), (b) (2), 9 (f) (g) (h) and 13. These sections of the Act are set out *verbatim* in Appendix B, pages 46 to 52.

STATEMENT OF THE CASE.

Arkansas Oak Flooring Company, a Delaware Corporation, (p. 3, R. 41,797) maintained an oak flooring manufacturing plant at Alexandria, Louisiana and was admittedly engaged in interstate commerce (p. 105, R. 41,797). At least 90 per cent of the products manufactured in Louisiana were sold and delivered out of Louisiana (p. 125, R. 41,797).

On March 12, 1954, the Alexandria plant had been without a union for four years (p. 125, R. 41,797). During October or November, 1953, James L. Ledbetter, a representative of District 50 of the United Mine Workers of America, contacted the mill employees for the purpose of organization (p. 129, R. 41,797).

As a result, a union was set up by the mill employees by their voluntary association about December 1, 1953 (p. 133, R. 41,797).

By February 23, 1954, a total of 174 of the plant employees had signed membership applications with District 50, United Mine Workers of America and had designated this union as its bargaining agent with the employer. (See photostatic copies of such applications (pp. 26-85, R. 41,797)). At that time there were 225 mill or plant employees. (P. 119, R. 41,797).

On February 24, 1954, Mr. Ledbetter identified himself to Mr. Fowler, Assistant Manager of the mill, and showed his union credentials and stated that District 50 represented a majority of the mill employees and made a formal demand for recognition of District 50 as the bargaining representative of the plant employees (Pp. 136, 95, 142, R. 41797). Mr. Fowler informed Mr. Ledbetter that his union was not recognized by the Labor Board and that he could not recognize it either.

On March 1, 1954, the union membership set up a picket line to obtain union recognition. The picketing at all times was on the public streets (p. 138, R. 41,797) and consisted of only three men. Only two signs were carried by the pickets. One sign stated "This plant is on strike;" the other, "We want recognition, District 50 UWA," (p. 108, R. 41,797).

The picketing was only at the employer's plant (p. 138, R. 41,797). There was not a single incident of any violence, threats or intimidation (p. 138, R. 41,797).

The picketing continued peacefully until the late afternoon of Tuesday, March 2, 1954, when the restraining orders were served on the defendants and the picketing ceased.

On March 15, 1954, Judge Allen V. Hundley issued a preliminary injunction, without reasons, against all defendants restraining them from "picketing on, near or about the plaintiff's property or approaches thereto, just off Texas Avenue, in the city of Alexandria."

This judgment was signed on March 25, 1954, Appendix A, p. 42, and on the same date all defendants took a devolutive appeal to the Supreme Court of Louisiana, docketed under Number 41,797.

On June 24, 1954 a permanent injunction identical with that rendered on the preliminary hearing; was rendered and signed (p. 9, R. 41,983). Appendix A, p. 44. The defendants took a devolutive appeal to the Supreme Court of Louisiana on the same day docketed under Number 41,983 (p. 10, R. 41,983).

The Supreme Court of Louisiana entered an order for consolidating the two appeals for presentment and argument. Appendix A, p. 45, and page 24, Proceedings, Supreme Court of Louisiana.

FEDERAL QUESTIONS IN THE COURTS BELOW.

A. In the Trial Court.

The third question for review, *supra*, was the first federal question in the courts below.

Paragraph 10 of the petition for injunction reads:

> "Petitioner shows that the picketing presently engaged in by the defendant union has for its unlawful purpose the forcing of petitioner to interfere with the rights of its employees, as ex-

pressed by the legislature of Louisiana, by requiring petitioner to deal with the defendant union as representative of its employees in the absence of their selection of said union as their representative."

On March 12, 1954 the defendants filed an exception to the jurisdiction *ratione materiae* (pp. 4 and 5, R. 41,797) reading:

"2. That the petition alleges an unfair labor practice growing out of a labor dispute in the field of interstate commerce, which is in the exclusive jurisdiction of the National Labor Relations Board as provided by the Labor Management Relations Act, Section 160 (a)." (P. 14, R. 41,797).

On the same day, the defendants filed their Return to the Rule (p. 18, R. 41,797) to show cause why a temporary injunction should not be granted. Paragraph 16 of said Return (p. 20, R. 41,797) reads as follows:

"Defendants further aver also or in the alternative, that this matter involves an unfair labor practice, growing out of a labor dispute in the field of interstate commerce and within the exclusive jurisdiction of the National Labor Relations Board."

On March 15, 1954, the Trial Court entered this order:

"This cause coming over from Friday, March 12, 1954 was called. Testimony and evidence adduced. Exceptions to the jurisdiction and

vagueness argued, submitted and overruled by the Court. Rule taken up and tried. Testimony and evidence adduced. Rule argued; submitted and judgment rendered making the rule absolute as prayed for." (P. 2, R. 41,797).

Formal judgment on the preliminary injunction, adverse to these defendants, was read and signed in open court on March 25, 1954, and is set out *verbatim* in Appendix A, p. 42.

The defendants reasserted this same federal question on their formal answer to the prayer for a permanent injunction. This appears on Page 6, R. 41,983, Paragraph 16.

Judgment adverse to these defendants on the permanent injunction appears on Page 9, R. 41,983 and is set out in Appendix A, p. 44.

The second question for review, *supra*, originates in Paragraph 8 of the petition (p. 4, R. 41,797) of the Arkansas Oak Flooring Company, which reads:

"In the alternative, and should it be found that petitioner is engaged in a labor dispute with the defendant union, which is denied, then it would be unable to recognize it as a bargaining agent of its employees because the National Labor Relations Board has refused to recognize said defendant union as a qualified labor organization because of the failure of its officers to disavow Communist affiliation, as required by the National Labor Relations Act, that picketing, peaceful or otherwise, by such

non-complying union, is an unlawful interference with petitioner's business."

The defendants, in Paragraph 17 of their Return to Rule, (p. 20, R. 41,797) pointed the question with these words:

> "Defendants aver that the right to strike and picket peacefully, as conducted herein by defendants and other employees of the petitioner, (as an expression of free discussion) is protected by the First and Fourteenth Amendments to the Constitution of the United States and Article I, Section 3 of the Constitution of Louisiana."

In the identical language just quoted, the defendants raised this question again in Paragraph 17 of their formal answer to the petition and prayer seeking a permanent injunction (p. 6, R. 41,983).

The first question presented for review, *supra*, arises from the averments of Paragraph 17 of the formal answer to the petition for an injunction, which reads as follows:

> "Defendants aver that the right to picket peacefully, as conducted herein by defendants and other employees of the petitioner), is protected by the First and Fourteenth Amendments to the Constitution of the United States and Article I, Section 3 of the Constitution of Louisiana.
>
> "And defendants also aver that this right to peacefully picket being concerted action by employees involving their employer engaged in inter-

state commerce, is action protected by the National Labor Relations Act enacted under the Commerce Clause of the United States Constitution and is, therefore, beyond State regulation or restraint."

The adverse rulings of the Trial Court on this question appear on Page 9, R. 41;983 and is set out in Appendix A, p. 44.

B. **In the Supreme Court of Louisiana.**

The defendants continued to press the federal questions on appeal, not by formal assignment of error, a method not used in civil appeals in Louisiana but by brief and oral argument before the Louisiana Supreme Court. Witness the following language in the opinion of that court:

"Counsel for defendants is contesting here, under specifications set out in brief, the correctness of the Trial Judge ruling with respect (1) to the citation of the Union in its association name and through Ledbetter; (2) the State's assumption of jurisdiction rationae materiae despite the fact the plaintiff is engaged in interstate commerce and an unfair labor practice is involved and (3) in any event, the right of a State Court under Louisiana law, to enjoin peaceful picketing of an employer's plant to secure recognition as the employee bargaining representative." Appendix A, page 22.

On the third question presented for review, *supra*, whether the petition alleged an unfair labor practice in in-

terstate commerce precluding state jurisdiction, the Supreme Court of Louisiana held as follows:

> "The second, and most important, error allegedly committed by the trial judge, that is, his failure to sustain the plea to the jurisdiction rationae materiae, is predicated upon the theory that this case involves an unfair labor practice in a dispute affecting interstate commerce and is, therefore, controlled by the landmark decision in Garner v. Teamsters Union, 346 U. S. 485, 74 S. Ct. 161, 98 L. Ed. 228, holding that such matters are within the exclusive jurisdiction of the National Labor Relations Board." Appendix A, page 24.

* * * * * *

> "* * * In the instant case the picketing was engaged in for the sole purpose of compelling the employer to recognize as the legally constituted agent of its employees a union that has no legal status before the National Labor Relations Board because of its failure and refusal to comply with the provisions of the Act requiring the filing of certain information relative to structural and financial matters, as well as non-communist oaths. This is clearly not an act denounced as an unfair labor practice by the amendment of 1947." Appendix A, p. 25.

On question 2 (a) presented for review, *supra*, whether peaceful picketing for recognition of the majority selected union representative was protected by the Labor Management Relations Act of 1947, the Supreme Court of Louisiana held as follows:

"It necessarily follows that inasmuch as the Union in the instant case has, by its own admission and as certified to by the National Labor Relations Board, failed and refused to comply with the provisions of Sections 9 (f) (g) and (h) of the 1947 amendment, the Board is without jurisdiction to entertain any question with respect to its protestations of majority representation and/or unfair labor practices, for it is not only ineligible for certification, but cannot compel the employer to recognize it as the representative of its employees. The plaintiff's refusal to recognize the Union was, therefore, not in violation of any obligation imposed by law, and the picketing in furtherance of this unlawful objective was the employment of economic pressure illegally for the purpose of causing the employer irreparable injury for which it has no adequate administrative or legal remedy—injurious conduct which the state has jurisdiction to relieve. * * *" Appendix A, p. 34.

On question 2 (b) presented for review, *supra*, whether peaceful picketing for recognition of the majority selected union representative was protected by the First Amendment of the Federal Constitution, the Supreme Court of Louisiana held as follows:

"The final contention—that the restraint of the picketing in this case is an infringement of the freedom of speech guarantees of the Federal and state constitutions—is also untenable inasmuch as we have found as a fact that the picketing here engaged in is for an unlawful objective." Appendix A, p. 36.

On the first question presented for review, *supra*, the right of the majority of the employees under Sections 1, 7, 8 (a) (5) and 13 of the Act to designate as representative of their own choosing for the purpose of collective bargaining, a labor union which has not complied with Sections 9 (f) (g) (h) of the Act, the adverse holding of the Supreme Court of Louisiana, is in these words:

> "The plaintiff's refusal to recognize the Union, was, therefore, not in violation of any obligation imposed by law." Appendix A, page 34.

On application for rehearing, the decision in *Weber, et al., v. Anheuser-Busch, Inc.*, handed down March 28, 1955, was called to the attention of the Supreme Court of Louisiana (R. 34). Rehearing was denied without mention of this decision (R. 25). Appendix A, page 41.

REASONS FOR GRANTING THE WRIT.

It is clear that the Supreme Court of Louisiana has decided federal questions. The decision construes and applies Section 9 (f) (g) and (h) of the Labor Management Relations Act of 1947 and the First and Fourteenth Amendments, United States Constitution.

The primary question in this case is whether the *right* of the majority of employees, engaged in interstate commerce, to select for purposes of collective bargaining, a representative of their own choosing, which *right* is recognized and protected by Sections 1, 7, 8 (a) (5) and 13 of the Labor Management Relations Act of 1947, is limited and restricted to unions which have complied with Section 9 (f) (g) and (h) of the Act.

By holding that:

"Plaintiff's refusal to recognize the union was therefore, not in violation of any obligation imposed by law"

the Supreme Court of Louisiana has necessarily limited and restricted the freedom of choice of the majority of the employees. If the employees have freedom of choice, the employer has the duty to recognize. The right of choice is in the employees; not the employer.

Then by holding that peaceful picketing to obtain recognition of a non-complying union is picketing for an unlawful purpose, the Supreme Court of Louisiana has limited and restricted the right of selection to complying unions. This court has never passed upon either of these questions.

The instant decision is of great importance because, if allowed to stand, it will be a precedent affecting thousands of members of the United Mine Workers of America and thousands of members of other unions who also use the self-help method of peaceful picketing and do not use the slower machinery of the National Labor Relations Board. The doctrine announced by this decision imperils all bargaining contracts now in existence between interstate employers and non-complying unions, and all their future contracts.

The instant decision qualifies the right of freedom of choice protected by Sections 1, 7, 8 (a) (5) and 13 of the Labor Management Relations Act of 1947 and is contrary to the principles enunciated by this court in *Weber v. Anheuser-Busch, Inc.*, 75 S. Ct. Rep. 480, ___ L. Ed. ___.

The Louisiana court has assumed jurisdiction to fix and pass upon the qualifications of a labor representative for employees in interstate commerce and is, therefore, in violation of the principles of two United States Supreme Court decisions, to-wit: *LaCrosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U. S. 18 and *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767..

The instant decision is in direct conflict with the decisions of United States Courts of Appeals in *National Labor Relations Board v. Reed & Prince Mfg. Co.*, 205 F. (2d) 131, 1st Cir. (1953) and *National Labor Relations Board v. Pecheur Lozenge Co.*, 209 F. (2d) 393, 2nd Cir. (1953), which hold that compliance with the requirements of Section 9 (f) (g) and (h) is not a condition precedent to the obligation of an employer to bargain collectively with the chosen representative of the employees, and is contrary to *National Labor Relations Board v. International Rice Milling Co.*, 341 U. S. 665, holding that the primary strike for recognition without certification is not proscribed.

In the instant case the majority representation is beyond question, being 174 out of 225 employees. The holding of the court that the union, "cannot compel the employer to recognize it as representative of its employees" is contrary to the principles followed in three opinions of United States Courts of Appeals, to-wit: *National Labor Relations Board v. Kobritz*, 193 F. (2d) 8 (14) 1st Cir., 1951; *Iob v. Los Angeles Brewing Co.*, 183 F. (2d) 398, 404; and *N. L. R. B. v. Clearfield Cheese Co.*, 213 F. (2d) 70 (3rd Cir., 1954).

The opinion of the Supreme Court of Louisiana, in holding that non-complying unions in interstate commerce cannot peacefully picket for recognition has reached a decision contrary to that reached by the Supreme Courts of Tennessee, Minnesota and California. See *Lodge Mfg. Co. v. Gilbert, et al.*, 260 S. W. (2d) 154; *Faribault Daily News v. International Typographical Union*, 53 N. W. (2d) 36; *Gerry of California v. Superior Court*, 194 P. (2d) 689.

The Louisiana court has unduly restricted the right of peaceful picketing allowed under the First Amendment of the United States Constitution. It seems to us to depart from the principles of the following cases on peaceful picketing decided by this court, to-wit: *Thornhill v. Alabama*, 310 U. S. 88; *Carlson v. California*, 310 U. S. 106; *A. F. of L. v. Swing*, 312 U. S. 321; *Bakery Drivers v. Wohl*, 315 U. S. 769 and *Cafeteria Employees Union v. Angelos*, 320 U. S. 293.

The evidence showing engagement in interstate commerce, Paragraph 10 of the petition, charges an unfair labor practice under the Act and state court jurisdiction is thereby precluded. Furthermore, the facts show majority representation and peaceful picketing and give protection under Sections 1, 7, 8 (a) (5) and 13 of the Act which deprives the state court of the power to enjoin, as we read the Weber decision.

Finally, the Act contemplates the existence of non-complying unions and provides the limited punishment of exclusion. The opinion below increases the punishment for non-compliance to a death sentence. It amounts to

judicial amendment to an Act of Congress. Confusion and uncertainty in the interpretation and administration of the Labor Management Relations Act of 1947 will be an inevitable consequence.

CONCLUSION.

For the foregoing reasons we respectfully submit this petition for writ of certiorari should be granted.

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APPENDIX "A"

Original Majority Opinion Judgment and Decree of the Supreme Court of Louisiana

Arkansas Oak Flooring Company

v.

United Mine Workers of America, et al.

Nos. 41,797 and 41,983

Supreme Court of Louisiana

APPEAL FROM THE NINTH JUDICIAL DISTRICT PARISH OF RAPIDES

HON. ALLEN V. HUNDLEY, JUDGE

FOURNET, CHIEF JUSTICE.

The United Mine Workers of America, District 50, and twelve other named defendants[1] are appealing devolutively from the judgments of the lower court granting to the plaintiff, Arkansas Oak Flooring Company, a preliminary and permanent injunction[2] restraining them "and any and all other persons acting for or on" their behalf "from picketing on, near or about plaintiff's property * * * just off Texas Avenue in the City of Alexandria, Rapides Parish, Louisiana."

---

1. James L. Ledbetter, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins.

2. No. 41,797 on the docket of the court is the appeal taken from the judgment granting the preliminary injunction, and No. 41,983 is the appeal taken from the judgment granting the permanent injunction.

The facts pertinent to a decision of the issues raised in this case are, substantially, that the Arkansas Oak Flooring Company (admittedly engaged in interstate commerce), with principal offices in Pine Bluff, Arkansas, operates a sawmill and flooring plant near the City of Alexandria, Louisiana, where it is engaged in the business of manufacturing lumber and oak flooring. The employees in this plant had been unorganized for a period of some four years and there was no dispute between the employer and employees with respect to working conditions, wages, or hours, when, in October or November of 1953, James L. Ledbetter, claiming to represent the United Mine Workers of America, District 50,—a Union that has admittedly failed and refused to comply with the requirements of Section 9 (f) (g) and (h) of the Labor Management Relations Act of 1947[3] arrived in Alexandria for the exclusive purpose of contacting the plaintiff's employees, with the avowed intention of ultimately compelling recognition of this Union as the bargaining representative of such workers. Purportedly having authority from some 174 of the plaintiff's 225 employees, exclusive of officers, inspectors, and foremen, who had allegedly joined the Union, Ledbetter, on February 23, 1954, at a time when he knew that the plant manager was out of the state, presented his demand for recognition of the Union to the assistant manager, who advised Ledbetter that inasmuch as the Union was not recognized by the National

3. Section 9 (f) and (g) require that a Union seeking to be declared the bargaining agent of employees file with the Secretary of Labor certain information relative to its organizational and financial structure, and Section 9 (h) requires the filing of affidavits with the National Labor Relations Board in which the Union's officers deny membership in or affiliation with the Communist Party and deny belief in the overthrow of the United States Government by force.

Labor Relations Board, he would not recognize it, and further advised that if Ledbetter desired to negotiate further he would have to take the matter up with the company officials in Pine Bluff, where all matters of policy were handled. Instead, a strike was called to compel recognition of the Union on March 1, 1954, and the picket line thrown up in connection therewith caused a large number of plaintiff's employees to refuse to cross the line and report for work, with the result that the employer's operations were greatly curtailed and irreparable loss was sustained.

The company thereupon secured a temporary restraining order with a rule to show cause why a preliminary injunction should not issue, and ultimately, a permanent injunction be granted. On the return day, the Union excepted to its citation through Ledbetter, contending that as an unincorporated labor organization with no corporate existence in Louisiana it could not be impleaded into court under its group or company name; further, that the court had no jurisdiction rationae personae since Ledbetter was not authorized to receive process for the members of the group or to stand in judgment for the Union. On this same day, all defendants excepted to the petition on the ground of vagueness, and also to the Court's jurisdiction rationae materiae, the latter exception being predicated on the assertion that the National Labor Relations Board alone has jurisdiction to halt the peaceful picketing of an employer whose business is affected by interstate commerce. In answer, all defendants generally denied the allegations of the petition, reiterated the matters set out in the exception, and asserted, additionally, that the right to strike and to picket peacefully as an expres-

sion of free discussion is protected by the First and Fourteenth Amendment to the Constitution of the United States, and Section 3 of Article 1 of the Constitution of Louisiana.

The exceptions were overruled and the preliminary injunction granted, which, following trial on the merits, was made permanent. These appeals followed:

Counsel for the defendants is contesting here, under specifications of error set out in brief, the correctness of the trial judge ruling with respect (1) to the citation of the Union in its association name and through Ledbetter (2) the state's assumption of jurisdiction rationae materiae despite the fact the plaintiff is engaged in interstate commerce and an unfair labor practice is involved, and (3) in any event, the right of a state court, under Louisiana law, to enjoin peaceful picketing of an employer's plant to secure recognition as the employee bargaining representative.

The contention of the appellants that the court had no jurisdiction of the Union rationae personae since Ledbetter was without authority to receive process of citation for the group or to stand in judgment is based upon the generally recognized rule that obtains in the common law that in the absence of an enabling or permissive statute an unincorporated voluntary association is not capable of being sued in its common or association name. But this rule is untenable in Louisiana under the express provisions of the Revised Statutes in this state which provide that "any voluntary association may be sued on any obligation incurred for the benefit of such association, in the name of the said association and all legal services in such

matters shall be made upon the managing official of such voluntary association and in the absence of such official, then upon any other official, and in the absence of all officials then upon any member of such association."[4] The fact that Ledbetter was not authorized to accept citation in the instant case is, therefore, of no moment.

As pointed out in the recent case of Godchaux Sugars, Inc. v. Chaisson (No. 41,569 on the docket of the court, handed down January 10, 1955), "To hold that an unincorporated group must be individually named and cited before it is susceptible to restraint would be equivalent to holding that, by subterfuge of unincorporation, group action transcends individual rights and is unlimited and unrestrictable except within the purview of the criminal statute, or that corporations unauthorized by law cannot be restrained from doing irreparable injury except through the process of individual identification." The reason given therefor is that "time is of the essence in the nature of the relief prayed for in this case (and) to require the ascertainment of individual membership of an unincorporated association and thereafter individual citation as conditions precedent to the granting of relief—and thereby require plaintiffs to gather information almost exclusively within the knowledge of defendants, without whose help it would be impracticable or perhaps even impossible to gather, and from whom hindrance and obstruction, rather than cooperation, could be reasonably anticipated,—would be tantamount to a denial of relief.

4. Act 170 of 1918, which has been incorporated into the Revised Statutes of 1950 as Paragraph 22 of R. S. 13:3471.

The second, and most important, error allegedly committed by the trial judge, that is, his failure to sustain the plea to the jurisdiction rationae materiae, is predicated upon the theory that this case involves an unfair labor practice in a dispute affecting interstate commerce and is, therefore, controlled by the landmark decision in Garner v. Teamsters Union, 346 U. S. 485, 74 S. Ct. 161, 98 L. Ed. 228, holding that such matters are within the exclusive jurisdiction of the National Labor Relations Board.

In the Garner case the Supreme Court of the United States simply gave added emphasis to the well settled jurisprudence that congressional legislation curtails state action in the field intended to be covered and that state action is, within that particular sphere, superseded; consequently, that Congress, by the adoption of the National Labor Relations Act of 1935 (referred to as the Wagner Act), and its amendment in 1947 by the Labor Management Relations Act (known as the Taft-Hartley law), did, with relation to the rights there conferred, place within the jurisdiction of the National Labor Relations Board the enforcement of the rights and privileges there delineated, which enforcement was to be carried out through the administrative scheme therein devised, as supplemented by the judicial remedies prescribed. The court was careful to point out, however, that the Act "leaves much to the states, though Congress has refrained from telling us how much," leaving to the judiciary to "spell out from conflicting indications of congressional will the area in which state action is still permissible," and that the Board has no jurisdiction in those zones that are either "governable by the State or * * * entirely ungoverned." As to these spheres, the court has declined to find an implied exclusion

of state power and, instead, permits the states to exercise their "historic powers over such traditionally local matters" as injurious conduct which the Board is without express power to prevent, public safety and order and the use of streets and highways, as well as in those cases where the Board "would decline to exercise its powers once its jurisdiction was invoked."

However, the labor activity sought to be restrained in the Garner case was peaceful stranger picketing for the purpose of coercing the employer to compel his employees to join a union—an activity, as demonstrated in the opinion, specifically denounced as an unfair labor practice in the Act. In the instant case the picketing was engaged in for the sole purpose of compelling the employer to recognize as the legally constituted agent of its employees a union that has no legal status before the National Labor Relations Board because of its failure and refusal to comply with the provisions of the Act requiring the filing of certain information relative to structural and financial matters, as well as non-communist oaths. This is clearly not an act denounced as an unfair-labor practice by the amendment of 1947.

Congress, in order to promote the peaceful settlement of labor disputes, in so far as they obstruct the free flow of commerce through strikes and other forms of industrial unrest, adopted the Act of 1935 and, in 1947, in order to adjust and minimize any differences in the rights granted to unions, employees, and or employers, amended that act by the adoption of the Labor Management Relations Act.

In Section 9 of this amendment, Congress has, in no uncertain terms, specifically devised the formal mode for the selection and rejection of agents or representatives. Paragraph (a) of the section provides that "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." Under this same section, an employer, if in doubt as to the majority claimed by a unit, can petition the Board for certification of the legally constituted representative, whether one or more unions claim to be the bargaining agent of the employees as defined in Section 9 (a) [Section 9 (c) (1) (B)], *and this certification can only be granted following an election by secret ballot conducted by the Board in accordance with its rules as promulgated in conformity with the provisions set out in the Act.* Section 9 (c) (1). The Board is, therefore, the only administrative agency with authority to certify the proper bargaining agent in a business affected by interstate commerce. It, additionally, the only agency that has the machinery for conducting the elections that determine that question.

Newman, in his work on "The Law of Labor Relations," gives us the following excellent analysis of the historical background of these provisions, as well as their effect:

"The problem of whether a union is the proper bargaining representative of the group of employees for whom the union purports to speak arises when the union

asserts that it constitutes the representative body with which the employer is obliged to bargain. If it is, it may bargain for the entire group, by virtue of the cardinal principle that the representatives selected by the majority of the employees shall be the exclusive representatives of all the employees. Under the Wagner Act of 1935 there was no way for the employer to test the validity of the union's claim by obtaining a ruling of the Board on the authenticity of the signature cards, possible withdrawals of authorization for the union to represent the individual employees, or the absence of coercion by the union organizers against the employees to induce them to sign the authorization. There was no provision for a certification by the Board of the bargaining representative at the request of the employer, although a union might obtain such certification on its request. Under the Wagner Act the employer had to decide for himself, therefore, the difficult questions of fact as to the validity of the proof that the union really was the choice of a majority of the employees * * *. The employer therefore faced the dilemma of refusing to recognize and bargain with the union at the peril that the unit might later be found by the Board to be the proper representative of the employee group, or of dealing with the union at the hazard of finding that a different representative was entitled to recognition. This hardship on the employer was so evident that after a few years of operation under the Wagner Act the Board promulgated an administrative ruling to the effect that where two groups asserted the right to represent the employees, the employer might demand an election under the direction of the Board before he was obliged to recognize either group. *There was still no relief when only a single*

group demanded recognition. This evil has now been fully corrected in the Act of 1947, where by the provisions of Section 9 (c) (1) (B) *the employer may petition for an election where any claim for representation is made upon him. The employer is therefore relieved from the hazard of recognizing an uncertified union which is not in fact entitled to recognition*, and from the hazard of denying recognition to an uncertified union which actually is validly authorized to represent an appropriate union * * *," Pages 13 and 14 (Emphasis supplied).

However, in Section 9 Congress also preclude investigation by the Board of any question concerning the representation of employees raised by a labor organization, as well as the issuance of any complaint with respect to an unfair labor practice at the behest of a labor organization until that organization had complied with the provisions of subsection (f) with respect to the filing of detailed information relative to the Union's organizational structure. Additionally, and in furtherance of "its policy of wholly eradicating and barring from leadership in the American labor movement, at each and every level, adherents to the Communist party and believers in the unconstitutional overthrow of our Government"[5] Congress adopted Section 9 (h) which provides that *"No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under Subsection (c) of this Section,*[6],

5. NLRB v. Happ Bros. Co., 196 F. (2d) 195. See, also, American Communication Assn. v. Douds, 339 U. S. 382, 94 L. Ed. 925 and particularly the concurring opinion of Justice Jackson at 94 L. Ed. 956.

6. Authorizing the Board to investigate a question of representation upon the petition of the employer, employee, or labor organization, as above described in the petition.

* * * and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10,[7] *unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by an illegal or unconstitutional methods.*" (Emphasis supplied).

Accordingly, there is, in the record, a letter addressed to the attorneys representing the plaintiff by the regional director of the National Labor Relations Board in which it is stated: "This is to advise that the United Mine Workers of America has not complied with the filing requirements of Section 9 (f) (g) and (h) of the Act and therefore may not use the services of the Board for either representation or unfair labor practice matters."

Counsel for the defendants conceded during the trial that this Union is non-complying, but argues in brief that "the significance of this means only that the defendant Union cannot use the facilities of the Labor Board to the extent that such are available to complying unions" contending, very ingenously, that such non-compliance does not render the union an "outlaw," but simply strips it of its right to appeal to the Board for the settlement of mat-

7. Authorizing the investigation through the procedure set out in Section 10 (b) the unfair labor practices as listed in Section 8.

ters of representation and unfair labor practices. He insists, therefore, that inasmuch as the employer is not denied the facilities of the Board, it has a duty to negotiate with the union chosen by the majority of its employees and to itself invoke the facilities of the board for the settlement of any grievances it may have with respect thereto.

Counsel is in error in his appreciation of the significance of these provisions. Shortly after the passage of the 1947 amendment to the Act, in the matter of Herman Loewenstein, Inc., 75 N.L.R.B. 377, the National Labor Relations Board had occasion to consider and interpret the provisions of Section 9 (f) (g) and (h) and it there laid down a policy from which it has never since deviated. Although in that case the matter had been brought to the Board by the employer, the Board, in refusing to take jurisdiction, said:

"*We construe the amended Act to provide, in essence, that a non-complying labor organization shall not be the beneficiary of any Board investigation of a question concerning representation.* For this reason the Board has declined to proceed to hearing or election on a petition filed by a non-complying union; it has declined to certify such a union since the effective date of the amendments to the Act, even though it won a victory at the polls before that date; it has declined to place such a union on the ballot, as intervenor, in an election held at the instance of a petitioning labor organization that has complied with Sections 9 (f) and (h), even though its intervention at the hearing was otherwise proper; and *it has declined to order an employer to bargain collectively with a noncomplying*

union, except upon compliance by the union within a specified period.

"Here the petitioner is not a complying labor organization, but the employer. The fact remains that the question concerning representation, although brought to the Board's attention by the employer's own petition, was 'raised by a labor organization.' It was raised by the affirmative claim, here made both by the Fur Workers, CIO and by the Adironcack Workers, that a labor organization represented a majority of the employer's employees within an appropriate unit. * * * *Although it is the employer's petition in such a case that sets the Board's machinery in motion, it is an individual's or a labor organization's initial claim for recognition that makes it possible for the employer to invoke that machinery.* If, as here, a labor organization that presented a claim for recognition has not complied with the provisions of Section 9 (f) and (h), we would no more implement the policy of Congress if we placed it on the ballot than if we were to do so in a case in which it, or another labor organization, filed the formal papers with the Board. *If a non-complying union were placed on the ballot and happened to win the election, no one could expect the Board under the amended Act to issue a certification that would run in its favor.* But a victory at the polls, even without later formal certification, would confer certain moral and practical advantages on the non-complying union which the basic policy of Congress appears to discountenance. Such a result can be averted with certainty only by our declining to place a non-complying union on any ballot, unless there are absolutely compelling statutory or policy reasons for doing so.

"In our opinion, *the fact that a petition has been filed by an employer rather than by a labor organization does not provide such compelling reasons.* The question concerning representation remains a question 'raised by a labor organization' which has made a claim for recognition as bargaining representative. An employer petition, like a union petition, seeks to resolve the question of who, if anyone, is the true bargaining representative of the employees. Either sets in motion the same investigative process; the same result, either of certification or of dismissal, may flow from either; and a Board election conducted on the basis of either will now preclude another Board election for 12 months. This similarity between employer and union petitions, both in purpose and in result, points strongly to the conclusion that a non-complying union should derive no more advantage from the one than it does from the other. The statutory language supports the same conclusion. Sections 9 (f) and (h) speaks in terms of questions raised, rather than of petitions filed, by labor organizations. An employer petition must allege that he has been presented with a claim by an individual or a labor organization for recognition as bargaining representative of his employees. The distinction which Congress intended to draw by the words 'raised by a labor organization' is, we believe, between a claim for recognition made by a union and a similar claim by an individual or individuals, not between a union petition and an employer petition filed with the Board. * * *

"* * * *We believe* * * * *that the exclusion of non-complying unions from the ballot in cases where employers are the petitioners is more nearly consistent with the supervening policy of denying the imprimatur of Gov-*

ernment to such labor organization." To this same effect are the later decisions in Staten Island Cleaners, Inc., 93 NLRB 63; and the Federal Refractories Corp., 100 NLRB 35." (All emphasis has been supplied).

The Act permits individual employees, as well as the employer, to petition the Board with respect to questions concerning representation and unfair labor practices, but the United States Court of Appeal for the Fifth Circuit, in N.L.R.B. v. Happ Brothers Co., 196 F. 2d 195, held it would not permit individual employees, bringing charges of unfair labor practices against an employer, to thus "front" for a non-complying union that was without access to the Board's facilities. It accordingly refused to enforce the Board's directive to the employer, brought at the instance of an employee, ordering it to cease and desist from the unfair labor practices there charged, stating it would not thus permit the great purpose of the amendment requiring the filing of non-communist oaths to be "rendered nugatory and destroyed" by the subterfuge of or resort to the simple expedient of employing an individual to "front" for non-complying unions.[8]

In Labor Board v. Highland Park Mfg. Co., 341 U. S. 322, 95 L. Ed. 969, the Supreme Court of the United States, holding that the Board was without authority to order an employer to bargain with a local union whose affiliate or parent union had not filed the requisite non-communist affidavits provided for in the Act, said: "*The Board is a statutory agency and, when it is forbidden to*

8. The picketing in the instant case is tantamount to organized activity engaged in for the purpose of compelling the employer to "front" for the Union in a representation matter before the Board.

investigate or entertain complaints in certain circumstances, its final order could hardly be valid." See, additionally, the annotations at 95 L. Ed. 979 and 97 L. Ed. 415. (Emphasis supplied).

It necessarily follows that inasmuch as the Union in the instant case has, by its own admission and as certified to by the National Labor Relations Board, failed and refused to comply with the provisions of Sections 9 (f) (g) and (h) of the 1947 amendment, the Board is without jurisdiction to entertain any question with respect to its protestations of majority representation and/or unfair labor practices, for it is not only ineligible for certification, but cannot compel the employer to recognize it as the representative of its employees. The plaintiff's refusal to recognize the Union was, therefore, not in violation of any obligation imposed by law, and the picketing in furtherance of this unlawful objective was the employment of economic pressure illegally for the purpose of causing the employer irreparable injury for which it has no adequate administrative or legal remedy—injurious conduct which the state has jurisdiction to relieve. See Stewart-Warner Corp. v. National Labor Relations Board, 194 F. 2d 207[9]

9. In this case officials of a non-complying union, acting in their individual capacities, sought to charge the employer with an unfair labor practice because of the employer's refusal to permit the circulation of petitions on its property in connection with an attempt to organize the employees. In concluding such conduct did not constitute an unfair labor practice by the employer the United States Court of Appeal for the Fourth Circuit said: "There is nothing in the Labor Management Relations Act which requires an employer to permit his premises to be used by employees for activities in contravention of the spirit and purpose of the act. The company was under no obligation to recognize or deal with the [non-complying Union] even it had obtained a majority, and, a fortiori, was under no obligation to permit adherents of the [Union] to use its premises * * * in carrying on a campaign in behalf of the [Union]." (Brackets added).

Goodwins, Inc. v. Hagedorn, 303 N. Y. 300, 101 N. E. 2d 697; Fulford v. Smith Cabinet Mfg. Co., 118 Ind. App. 326, 77 N. E. 2d 755; Cordey China Co. v. United Mine Workers of America, 25 N. J. Super. 514, 96 A. 2d. 696; and Simmons v. Retail Clarks Union Local 770, 14 Labor Cases 73, 335.

Counsel for appellants, with respect to the third specification of error urged, concedes in brief that since the trial of this case on the merits the Douglas Public Service and Godchaux Sugars, Inc., cases have been decided adversely to his contention that the state is without right under Louisiana law to enjoin peaceful picketing, but he contends that in so holding we violated a cardinal rule of constitutional construction in that we invalidated the state's anti-injunction statute although such conclusion was unnecessary inasmuch as we found violence occurred during the course of both of these labor controversies.

Counsel is in error in this statement, for we declared in the Douglas Public Service case (approved in the Godchaux case) in clear and unequivocal language that "* * * any act of the legislature, whether procedural or substantive, that infringes or trenches upon the constitutional prerogatives of the courts, cannot stand;" consequently, that the "provisions of the so-called anti-injunction act that seek to limit the jurisdiction of the district courts of this state in granting immediate relief, if that is necessary for the protection of rights and property, are illegal and ineffective." It necessarily follows that the doors of the courts of this state cannot be closed to the plaintiff here upon the showing made that irreparable injury

being suffered by it as a consequence of the unlawful activities of the defendants.

The final contention—that the restraint of the picketing in this case is an infringement of the freedom of speech guarantees of the Federal and state constitutions—is also untenable inasmuch as we have found as a fact that the picketing here engaged in is for an unlawful objective. Hughes v. Superior Court of California, 339 U. S. 460, 70 S. Ct. 718, 94 L. Ed. 985; International Brotherhood of Teamsters v. Hanke, 339 U. S. 470, 70 S. Ct. 773, 94 L. Ed. 995; Building Service Employers International Union v. Gazzam, 339 U. S. 532, 70 S. Ct. 784, 94 L. Ed. 1045; Richman Brothers Co. v. Amalgamated Clothing Workers, 116 N. E. 2d 60, affirmed by the United States Supreme Court on April 4, 1955; W. E. Anderson Sons Co. v. Local Union No. 331, 156 Ohio St. 541, 104 N. E. 2d. 22; as well as Cordey China Co. v. United Mine Workers of America, 95 A. 2d. 696, and the authorities therein cited.

In disposing of this issue adversely to the contention of the defendants in the recent decisions in Godchaux Sugars, Inc. (supra), we observed:

"It is true that the United States Supreme Court has likened picketing to speech, but this sweeping analogy as first enunciated in Thornhill v. Alabama, 310 U. S. 88 has since been greatly refined and restricted. In Hughes v. Superior Court of California, 339 U. S. 460, 70 S. Ct. 718, 94 L. Ed. 984, the United States Supreme Court * * * said: '"The domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states", * * * no doubt includes liberty of thought and appropriate

means for expressing it. But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing "is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated." * * * Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influence, and it produces consequences different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word. * * * However general or loose the language of opinions, the specific situations have controlled decisions. It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance. * * * "a state is not required to tolerate in all places and all circumstances even peaceful picketing. * * *."

Furthermore, the right to speak freely, as guaranteed by the Constitution is the right to speak for one's self or as the duly authorized agent of another.

For the reasons assigned, the judgments appealed from are affirmed, at the cost of the appellants.

APPENDIX "A"

Original Dissenting Opinion in the Supreme Court of Louisiana

Nos. 41797 and 41983

ARKANSAS OAK FLOORING COMPANY

versus

UNITED MINE WORKERS OF AMERICA ET AL

HAWTHORNE, J., Dissenting in Part.

It is my view that the exception to the citation filed in behalf of the United Mine Workers of America, District 50, is well founded, and that the majority is in error in affirming the judgment of the lower court which issued an injunction against the association as such.

United Mine Workers of America, District 50, is an unincorporated labor union or voluntary association. It was named as one of the defendants in this suit and cited only through James L. Ledbetter, one of its members. Being an unincorporated association, it cannot be sued under the existing laws of this state because it has no legal existence distinct from that of its members.*

Article 446 of the Civil Code provides that "Corporations unauthorized by law or by an act of the Legislature, enjoy no public character, and cannot appear in a court of justice, but in the individual name of all the members who compose it, and not a political body; although these corporations may acquire and possess es-

(*) Except of course as provided in R. S. 13:3471.

tates, and have common interests as well as other private societies."

In State ex rel Doane v. General Longshore Workers, 61 So. 2d 747, a suit for mandamus against an unincorporated association, the Court of Appeal for the Parish of Orleans in a well reasoned opinion correctly held that such an association may not, in the absence of statute, sue or be sued in its society or company name. The majority opinion in the instant case cites and quotes Act 170 of 1918, R. S. 13:3471 (22), and concludes that this statute authorizes the instant suit. This conclusion is incorrect because this is not an action or suit on an "obligation incurred for the benefit" of the association. Plaintiff here is seeking an injunction against peaceful picketing, and consequently the statute has no application.

In State ex rel Doane v. General Longshore Workers, supra, the Court of Appeal gave good and valid reasons in support of its decision that the statute was not applicable in that case. The reasons given and the authorities cited in the Doane case clearly show that the statute is equally inapplicable to the instant case.

In the case now under consideration the majority opinion relies on certain dicta in the case of Godchaux Sugars, Inc. v. Chaisson et al., No. 41569 on our docket, not yet reported, in support of the proposition that an unincorporated group need not be individually cited to be subject to restraint by injunction. In the Godchaux case the union or voluntary association was not sued in its association name, as is the defendant in the instant case, and in fact was not even a party to the suit. Conse-

quently the Godchaux case is not authority on the citation issue in the instant case.

As I pointed out in my dissenting opinion in Douglas Public Service Corp. et al. v. Gaspard et al., 225 La. 972, 74 So. 2d 182, and in my concurring opinion in Godchaux Sugars, Inc. v. Chaisson et al., supra, I do not agree that the procedural requirements of the "Little Norris-LaGuardia Act" are unconstitutional. In the Douglas and Godchaux cases this court in effect held that the statute was unconstitutional, and that a plaintiff seeking injunctive relief in a labor dispute need not follow the procedural requirements set out in the statute. Some doubt has been expressed by members of the bar as to whether the holding in those cases was limited to the particular facts of each case. The holding in the instant case, however, removes any such doubt. Here the majority is affirming a judgment of the lower court granting an injunction against a labor union for peaceful picketing on a public street, although no acts or threats of intimidation, coercion, violence, fraud, breach of the peace, or trespass were committed. This injunction is issued in the teeth of R. S. 23:841 which provides:

"No court shall issue any restraining order or temporary or permanent injunction which in specific or general terms prohibits any person or persons from doing, whether singly or in concert, any of the following acts:

"* * *

"(5) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising,

speaking, patrolling any public street or any place where persons may lawfully be, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof * * *"

Consequently the entire act is now as dead as a salted mackerel, made so by judicial proclamation.

However, the holding of the majority on R. S. 23:841 is now the law applicable to cases of this kind, and therefore, for the reasons given in my concurring opinion in the Godchaux case, supra, I am not dissenting on this ground. Nevertheless I am dissenting on the matter of citation which I discussed above.

APPENDIX "A"

Denial of Rehearing by Supreme Court of Louisiana

UNITED STATES OF AMERICA
STATE OF LOUISIANA

SUPREME COURT OF THE STATE OF LOUISIANA
New Orleans, Tuesday, May 31, 1955

Court was duly opened, pursuant to adjournment. Present, Their Honors: John B. Fournet, Chief Justice, Amos Lee Pontier, Joe B. Hamiter, Frank W. Hawthorne, E. Howard McCaleb, Harold A. Moise, and James D. Simon, Associate Justices.

ACTION BY THE COURT UPON APPLICATIONS FOR REHEARING

Rehearing was refused in the following case:

41,797) Arkansas Oak Flooring Co. v. United Mine
41,983) Workers

I, V. J. Courville, Clerk, Supreme Court of Louisiana, do hereby certify the above to be a true and correct extract from the minutes of this court.

IN WITNESS WHEREOF, I hereunto sign my name and affix the seal of the court aforesaid, at the City of New Orleans, this 6th day of June, A. D., 1955.

/s/ V. J. Courville
Clerk, Supreme Court of Louisiana

(Page 25, Proceedings in Supreme Court of Louisiana)

APPENDIX "A"

Opinion and Judgment Granting a Preliminary Injunction in Trial Court

JUDGMENT

DATED MARCH 25, 1954

FILED MARCH 25, 1954

BEHALF OF PLAINTIFF

NO. 43,739

Arkansas Oak Flooring Company	:	Ninth Judicial District Court
v.	:	Parish of Rapides
United Mine Workers of America, et al.	:	State of Louisiana

This cause having come on for trial on the rule for a preliminary injunction, and trial being regularly had, and the court being of the opinion that the plaintiff is entitled to the relief prayed for, because, among other things,

it will suffer irreparable loss and damage unless a preliminary injunction is granted, for other reasons orally assigned.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that a preliminary injunction issue herein enjoining and prohibiting the United Mine Workers of America, its officers, members and employees, and the other defendants herein, James Ledbetter, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, and any and all other persons acting for or on behalf of said defendants, from picketing on, near or about plaintiff's property or approaches thereto just off Texas Avenue in the City of Alexandria, Rapides Parish, Louisiana; said preliminary injunction to issue upon the plaintiff furnishing bond with good and solvent surety and conditioned as the law requires, in the sum of $5,000.00.

Judgment rendered in open court on March 15, 1954, and read and signed in open court on this 25th day of March, A. D. 1954.

Allen V. Hundley
Judge

APPENDIX "A"

Opinion and Judgment Granting Permanent Injunction in Trial Court

Judgment

Dated June 24, 1954,
Filed June 24, 1954,
Behalf of Plaintiff

NO. 43,739

Arkansas Oak Flooring Company	Ninth Judicial District Court
versus	Parish of Rapides
United Mine Workers of America, et al.	State of Louisiana

******

This cause having come on for trial on the merits, trial being regularly had and the court being of the opinion that the plaintiff is entitled to the relief prayed for, for reasons orally assigned,

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that a permanent injunction issue herein enjoining and prohibiting the United Mine Workers of America, its officers, members and employees, and the other defendants herein, James Ledbetter, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, and any and all other persons acting for or on behalf of said defendants, from picketing on, near or about plaintiff's property or ap-

proaches thereto just off Texas Avenue in the City of Alexandria, Rapides Parish, Louisiana.

Judgment rendered in open court on this the 24th day of June, A. D. 1954.

/s/ Allen V. Hundley
J U D G E

FILED IN OPEN COURT
June 24, 1954
Mabel S. Tannehill
Deputy Clerk of Court

APPENDIX "A"

Order of Supreme Court of Louisiana Consolidating Cases No. 41797 and 41983

Order

CONSIDERING the above and foregoing Motion

IT IS HEREBY ORDERED that the appeals in this case No. 41797 and No. 41983 be consolidated on the docket of this Court for the purpose of presentation and argument.

New Orleans, Louisiana, August 6, 1954.

/s/ Joe B. Hamiter
JUSTICE

CERTIFICATE

I certify that a copy of this motion has been served on Stafford and Pitts, Counsel for Appellee, Alexandria, Louisiana.

/s/ James I. McCain
James I. McCain

A TRUE COPY:
CLERK'S OFFICE, NEW ORLEANS, June 13th, 1955.

/s/ V. J. Courville
Clerk Supreme Court of Louisiana

(Page 24, Proceedings in Supreme Court of Louisiana)

APPENDIX "B"

U.S.C.A. United States Constitution, Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S.C.A. United States Constitution, Amendment XIV, Section 1: (Excerpt)

* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX "B"

Labor Management Relations Act of 1947

Section 1, Last Paragraph:

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. 29 U. S. C., Section 151.

Section 7:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title. 29 U. S. C., Section 157.

APPENDIX "B"

Labor Management Relations Act of 1947—(Continued)

Section 8 (a) (3):

(a) It shall be an unfair labor practice for an employer—

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as pro-

vided in section 159 (a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 159 (f), (g), (h) of this title, and (ii) unless following an election held as provided in section 159 (e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership. 29 U. S. C., Section 158 (a) (3).

APPENDIX "B"

Labor Management Relations Act of 1947—(Continued)

Section 8 (a) (5):

(a) It shall be un unfair labor practice for an employer—

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of

section 159 (a) of this title., 29 U. S. C., Section 158 (a) (5).

Section 8 (b) (2):

(b) It shall be an unfair labor practice for a labor organization or its agents—

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this Section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership. 29 U. S. C., Section 158 (b) (2).

Section 9 (f) (g) and (h):

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its

other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000.00 and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end

of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor. 29 U. S. C., Section 159 (f).

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, and no complaint shall issue under section 160 of this title with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection. 29 U.S.C., Secton 159 (g).

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month

period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of sections 286, 287, 1001, 1022, and 1023 of title 18 shall be applicable in respect to such affidavits. 29 U. S. C., Section 159 (h).

Section 13:

Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right. 29 U. S. C., Section 163.

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Supreme Court of the United States

OCTOBER TERM, 1955

No. 227

UNITED MINE WORKERS OF AMERICA, Et Al., *Petitioners*

v.

ARKANSAS OAK FLOORING COMPANY, *Respondent*

On Writ of Certiorari to the Supreme Court of the State of Louisiana

BRIEF FOR PETITIONERS

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Supreme Court of the United States

OCTOBER TERM, 1955

No. 227

UNITED MINE WORKERS OF AMERICA, ET AL., *Petitioners*

v.

ARKANSAS OAK FLOORING COMPANY, *Respondent*

On Writ of Certiorari to the Supreme Court of the State of Louisiana

---

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Supreme Court of the State of Louisiana, (R. 69), was rendered on April 25, 1955, and is reported in 81 So(2d) 413. Rehearing was refused on May 31, 1955. (R. 101)

JURISDICTION

The petition for certiorari was filed on July 12, 1955, under Title 28, United States Code, Section 1257 (3). Certiorari was granted on October 17, 1955. (R. 101)

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QUESTIONS PRESENTED FOR REVIEW

1. Do Sections 1, 7, 8 (a) (5) and 13 of the Labor Management Relations Act protect the rights of employees engaged in interstate commerce to designate as representative of their own choosing for the purposes of collective bargaining, a labor union which has not complied with Section 9 (f) (g) and (h) of the Act?

2. (a) Is picketing to obtain recognition of a majority designated union representative, which has not complied with Section 9 (f) (g) and (h) of the Labor Management Relations Act, picketing for an unlawful purpose which may be enjoined for that reason by a State Court?

(b) Is it not picketing protected by Amendments I and XIV of the United States Constitution and Sections 1, 7, 8 (a) (5) and 13 of the Labor Management Relations Act?

3. Where an employer engaged in interstate commerce files in a State Court a petition for an injunction against some of his employees and a labor union, which petition alleges:

> "Petitioner shows that the picketing presently engaged in by the defendant union has for its unlawful purpose the forcing of petitioner to interfere with the rights of its employees, as expressed by the legislature of Louisiana, by requiring petitioner to deal with the defendant union as a representative of its employees in the absence of their selection of said union as their representative." (R. 4)

does it not charge an unfair labor practice under Section 8 (a) (3) and Section 8 (b) (2) of the Labor Management Relations Act and thereby preclude State jurisdiction?

STATEMENT OF THE CASE

The respondent, Arkansas Oak Flooring Company, a Delaware Corporation (R. 24), operating an oak flooring manufacturing plant in Alexandria, Louisiana, filed an injunction suit on March 2, 1954 (R. 3) in the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana, against the United Mine Workers of America, a labor organization, (R. 3), and James Ledbetter as an agent of said labor organization, and Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, plant employees of the respondent. Respondent alleged that these defendants (petitioners herein) had set up a picket line at the plant on March 1, 1954, which a number of the employees refused to cross, thereby curtailing the operation of respondent's plant.

Respondent pleaded the usual equity allegations and sought injunctive relief against the picket line based on the following numbered paragraphs of the petition which became the sources of the issues in this litigation:

8

"In the alternative, and should it be found that petitioner is engaged in a labor dispute with the defendant union, which is denied, then it would be unable to recognize it as bargaining agent of its employees because the National Labor Relations Board has refused to recognize said defendant

union as a qualified labor organization because of the failure of its officers to disavow communist affiliation, as required by the National Labor Relations Act; that picketing, peaceful or otherwise, by such noncomplying union, is an unlawful interference with petitioner's business." (R. 4)

"Petitioner shows that the picketing presently engaged in by the defendant union has for its unlawful purpose the forcing of petitioner to interfere with the rights of its employees, as expressed by the legislature of Louisiana, by requiring petitioner to deal with the defendant union as a representative of its employees in the absence of their selection of said union as their representative." (R. 4)

In their exception to the jurisdiction (R. 10), their return to the rule (R. 13), and their formal answer (R. 63), the petitioners (then defendants) pleaded, in brief, that the respondent had alleged an unfair labor practice within the exclusive jurisdiction of the National Labor Relations Board. In their return to the rule (R. 12 and 13) and formal answer (R. 63) petitioners set up that the United Mine Workers of America had been selected as a bargaining agent by 80% of the plant employees; that when the employer arbitrarily refused to negotiate with or recognize this bargaining agent a picket line was set up, and that this peaceful employee picket line was protected by the free speech provision of the First Amendment to the United States Constitution. (R. 13) (R. 64) and, finally, that this picketing was protected by the National Labor Relations Act enacted under the Commerce Clause of the United States Constitution and beyond state regulation or restraint (R. 64).

On March 2, 1954, the Trial Court issued a restraining order against all picketing (R. 7).

On the trial of this cause on March 12 and 15, 1954, on the rule for a temporary injunction, the pertinent, uncontradicted evidence shows the following:

The respondent, Arkansas Oak Flooring Company, had maintained for a number of years prior to 1954 an oak flooring manufacturing plant in Alexandria, Louisiana, (R. 25) where respondent employed two hundred and twenty-five mill or plant employees in addition to the normal clerical, supervisory and management staff (R. 36, 39). Approximately ninety percent of the finished product of this plant was sold out of the State of Louisiana (R. 42) and the respondent was admittedly in interstate commerce (R. 27).

There had been no union at the Alexandria plant within the four years prior to March 1, 1954 (R. 42).

During October or November, 1953, James L. Ledbetter, a representative of District 50 of the United Mine Workers of America, contacted the mill employees for the purpose of organization (R. 48). As a result a union was organized by the mill employees by their voluntary association about December, 1953 (R. 50).

By February 23, 1954, a total of 174 of the plant employees had signed membership applications with District 50, United Mine Workers of America, and had designated this union as its bargaining agent with the respondent (R. 51). (See copy of designation, D-1 at R. 15). On this date a meeting was held by the members of the union and James L. Ledbetter was

authorized, by unanimous resolution, to approach the employer and ask for recognition of District 50, United Mine Workers, as bargaining agent for the plant employees (R. 36).

On the next day, Wednesday, February 24, 1954, the president of the local union, Cornelius W. Brown, and Ledbetter went to the plant and there Mr. Ledbetter contacted Mr. George Fowler, who was in charge of the plant at that time (R. 59). Ledbetter identified himself to Mr. Fowler and showed his union credentials and stated that he represented the United Mine Workers and that the United Mine Workers represented a majority of the mill employees and he then made a formal demand for recognition of District 50 of the United Mine Workers as bargaining representative for these employees (R. 52, 21, 58). Mr. Fowler informed Mr. Ledbetter that his union "wasn't recognized by the National Labor Relations Board and that he didn't recognize us either." (R. 53).

Mr. Ledbetter reported this refusal of recognition to the union members on the same afternoon and the members voted to post a picket line at the plant on the following Monday, March 1, 1954 (R. 54).

On this date, the union members, including all individual employee defendants, set up a picket line at the plant. The picket line consisted of only three men. Two men carried signs on Texas Street near the main entrance to the plant and one picket was set up on a side street entrance (R. 29, 55).

The picketing at all times was on public property, i.e., the public streets (R. 29).

The picketing was peaceful (R. 55) and was only at the employer's plant (R. 29).

The signs were carried by employees of the plant, each a union member (R. 29).

Only two signs were carried by the pickets. One sign stated "This plant is on strike;" the other, "We want recognition, District 50 U.M.W." (R. 29). The picketing was for the purpose of obtaining recognition of District 50, United Mine Workers as the bargaining representative of the plant employees (R. 30).

The picketing continued peacefully until the late afternoon of Tuesday, March 2, 1954, when restraining orders were served on the defendants and the picketing ceased.

On the trial of this rule to show cause, in addition to the above evidence, union membership cards of 179 of the mill employees were offered and received in evidence (Defendant's Ex. D-1 and D-2, R. 15, 16 and 51, 59). See also, Stipulation, R. 17.

The respondent offered in evidence, without objection, a letter (Plaintiff's Ex. I, R. 34, 14) from the Regional Director, Fifteenth Region, National Labor Relations Board of New Orleans, Louisiana, which stated that

> "the United Mine Workers of America has not complied with the filing requirements of Sections 9 (f) (g) and (h) of the Act and therefore may not use the services of the Board for either representation or unfair labor practice matters."

On March 15, 1954, the Trial Judge issued a preliminary injunction, without reasons, against all defendants restraining them from "picketing on, near

or about the plaintiff's property or approaches thereto just off Texas Avenue in the City of Alexandria."

This judgment (R. 17), was signed on March 25, 1954, and an appeal was perfected to the Supreme Court of Louisiana (R. 18).

Hearing on the permanent injunction was had on June 24, 1954, and by stipulation of counsel all evidence offered on the exceptions and rule for a preliminary injunction was re-offered as the evidence on the hearing for a permanent injunction (R. 61). The Trial Judge on June 24, 1954, rendered a judgment decreeing a permanent injunction similar to that adjudged on the temporary injunction hearing (R. 65). On the same date an appeal was taken to the Supreme Court of Louisiana (R. 66).

After both appeals were docketed in the Supreme Court under No. 41797 and 41983 respectively, the appeals were consolidated by order of the Supreme Court of Louisiana for presentation and argument (R. 68).

On April 25, 1955, the Supreme Court of Louisiana rendered its decree, with reasons, affirming both judgments of the Trial Court (R. 69).

A rehearing was refused by the Supreme Court of Louisiana on May 31, 1955 (R. 101). Petition for certiorari to the Supreme Court of Louisiana was filed in this Court on July 12, 1955, and was granted on October 17, 1955. (R. 101).

The foregoing record is clear. No fact is in dispute and none is in doubt. The opinion of the Supreme Court of Louisiana leaves no doubt as to what the

Board. The decision of the Supreme Court of Louisiana limits both the right of the employees to the free choice of their representative and their right of self help through a strike protected by Section 13 of the Act.

Point Number II—The Right to Strike Is Protected by the Act

Our point number two is this: If the Act protects the employees' freedom of choice it follows that a strike and peaceful picketing to enforce recognition of the chosen representative is likewise protected by the Act.

The opinion of the Supreme Court of Louisiana contains a glaring non sequitur. The Court says of the chosen representative, "It is not only ineligible for certification, but cannot compel the employer to recognize it as the representative of its employees."

The authorities are almost unanimous in holding that representation is not dependent upon prior certification by the National Labor Relations Board.

The U. S. Court of Appeals for the First Circuit has given a clear statement of the law in *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 205 Fed. 2nd 131. In that case, the respondent contended that it was under no statutory duty to bargain with a non-complying union. The Court says:

> "The short answer is that Congress has not made compliance with the filing requirements of par. 9 (f), (g) and (h) a condition precedent to the obligation of an employer under par. 8 (a) (5) to bargain collectively with the chosen representative of the employees; such compliance is merely made a condition precedent to invoking the machinery of the Act for the investigation of a question concerning representation, or for the

issuance of a complaint charging the commission of unfair labor practices."

The United States Court of Appeals for the Second Circuit gave the same construction to the provisions of the Act in the case of *N.L.R.B.* v. *Pecheur Lozenge Co. Inc.*, 209 Fed. 2nd 393, 402, 2nd Cir. 1953. Their language is:

> "In these circumstances, while failure to file the non-communist affidavits required by Section 9 (h) and financial statement and other reports required by Section 9 (f) and (g), bars a union from access to the processes of the Board, it does not necessarily destroy the Union's status as bargaining representative for purposes of Section 8 (a) 5. West Texas Utilities Co. v. N.L.R.B., 87 U. S. App. D.C. 179, 184 F. 2nd 233, certiorari denied, 341 U. S. 939, 71 S. Ct. 999, 95 L. Ed. 1366; N. L. R. B. v. Tennessee Egg Co., 6 Cir., 201 F. 2d 370, reversing 199 F. 2d 95 on the authority of N.L.R.B. v. Dant, 344 U. S. 375, 73 S. Ct. 375; N.L.R.B. v. Reed and Prince Mfg. Co., 1 Cir., 205 F. 2d 131, 133. In the latter case, the Court held that 'Congress has not made compliance with the filing requirements of 9 (f) (g) and (h) a condition precedent to the obligation of an employer under 8 (a) (5) to bargain collectively with the chosen representative of the employees.'"

The Supreme Court of Wisconsin, in the case of *Faribault Daily News, Inc.*, v. *Int. Typo Union*, 53 N.W. (2) 36, 47, gave an interpretation of the Act directly contrary to that of the Louisiana Supreme Court. Witness the following:

> "Plaintiff contends that the union has not filed the non-communist affidavit required by the federal act, and therefore, not being accredited,

in any way the right to strike, or to affect the limitations or qualifications on that right.' 61 Stat. 151, 29 U.S.C. (Supp. III) Sec. 163.

"By Sec. 13, Congress has made it clear that Section 8 (b) (4), and all other parts of the Act which otherwise might be read so as to interfere with, impede or diminish the union's traditional right to strike, may be so read only if such interference, impediment or diminution is 'specifically provided for' in the Act. No such specific provision in Sec. 8 (b) (4) reaches the incident here. The material legislative history supports this view."

A paragraph footnote on page 674 reads as follows:

"No. 8—See also, 'the primary strike for recognition (without a Board certification) is not proscribed.' S. Rep. No. 105, 80th Cong., 1st Sess. (pt. 1) 22, and see H. R. Rep. No. 510, 80th Cong., 1st Sess. 43."

It is to be noted that the strike in the instant case was called by the individual employees of Arkansas Oak Flooring Company. The picketing which was enjoined was picketing solely by the employees of that company. If they had the right to choose a representative and had a right to strike protected by Section 13, surely they had the right peacefully to picket. From time immemorial, picketing has been an integral and inseparable part of a strike. A strike without a picket line would, in the vast majority of cases, be of little consequence. A secret strike is a futile strike.

Picketing is the most graphic appeal to public sentiment and public favor available to the laboring man.

Point Number III—Certification Is Not a Condition Precedent to Representation

An employer is entitled to an election and certification only when there is a bona fide doubt as to majority representation.

The opinion of the Supreme Court of Louisiana in holding that a non-complying union and its member employees could not legally picket for recognition of that majority selected union, was based upon the reasoning that since the union by non-compliance prevented the employer from having such union certified, the union could not get recognition by means of a peaceful picket line. The fallacy of the Court's reasoning is in assuming that the employer had a right to certification in this case.

If the petitioning union had been in compliance, the employer could not have gotten an election and certification in this case, as such is only ordered by the Labor Board when necessary to decide a bona fide question of majority representation. It is to be remembered that 174 of the 225 plant employees had joined the union, selected it as their bargaining agent and signed authorization cards. Patently, there was no bona fide question of majority representation.

The Act itself shows very clearly that representation elections will only be ordered when necessary to determine a representation question. Section 159 (c) (1) (B) states as follows:

> "Whenever a petition shall have been filed . . . (B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative . . . ; the Board shall investigate such petition and if it has reasonable cause to believe

Court decided and the reasons for that decision. In speaking of the union representative, the Court says:

> "* * * it is not only ineligible for certification, but cannot compel the employer to recognize it as the representative of its employees. The plaintiff's refusal to recognize the Union was, therefore, not in violation of any obligation imposed by law, and the picketing in furtherance of this unlawful objective was the employment of economic pressure illegally for the purpose of causing the employer irreparable injury for which it has no adequate administrative or legal remedy —injurious conduct which the state has jurisdiction to relieve." (R. 80)

As to free speech guaranteed by the First Amendment, the Court says:

> "The final contention—that the restraint of the picketing in this case is an infringement of the freedom of speech guarantees of the Federal and state constitutions—is also untenable inasmuch as we have found as a fact that the picketing here engaged in is for an unlawful objective. * * *" (R. 82)
>
> * * * * *
>
> "Furthermore, the right to speak freely, as guaranteed by the constitution, is the right to speak for one's self or as the duly authorized agent of another." (R. 83).

SUMMARY OF ARGUMENT

I. The right of employees engaged in interstate commerce to bargain collectively through representatives of their own choosing is unqualifiedly guaranteed by Sections 1, 7 and 13 of the Act. Section 9 (f) (g) and (h) has no effect upon the freedoms of choice and of designation of the employees' representative. This

Section merely denies the processes of the Board to non-complying unions. These basic rights of employees which Congress has recognized and protected cannot be restricted and declared unlawful by the Supreme Court of Louisiana.

II. The right to strike is a form of self-help protected by Section 13. The employer has the duty to bargain with the majority-selected representative and Congress has nowhere proscribed a primary strike for recognition.

The Supreme Court of Louisiana was interpreting and construing the Federal Act alone and did not purport to be declaring Louisiana law.

III. In order to hold the strike unlawful, the Supreme Court of Louisiana reasoned that non-compliance prevented the employer from having the union certified and, therefore, prevented the union from getting recognition through the compulsion of a strike. The majority representation being undisputed and free of all doubt, there was no need of certification for the employer to satisfy himself as to the realities of the designation and selection.

IV. The element of free speech is inherent in peaceful picketing. The purpose being lawful under the Act and the picketing peaceful under any test, it was the equivalent of free speech and is protected by the First Amendment.

V. The provisions of Section 8 (b) (2) and 8 (a) (3) of the Act, working together, constitute an unfair labor practice, known as employer coercion. The petition for injunction charged employer coercion. That charge placed exclusive jurisdiction to determine the question in the National Labor Relations Board.

ARGUMENT

Point Number I—Freedom of Choice Both Unrestricted and Protected by the Act

For answer to question number one for review, our first point is this: the right of employees engaged in interstate commerce to bargain collectively through representatives of their own choosing is both unrestricted and protected by the Labor Management Relations Act of 1947, as amended. This right cannot be nullified, restricted or limited by a State statute nor by a State Court decision.

The questions in this case must, we believe, be decided first of all by a careful study of the Labor Management Relations Act of 1947, as amended (hereafter referred to as the Act).

The public policy of the United States is expressly declared in the closing paragraph of Section 1 of the Act to be:

> "It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." 61 Stat. 136, 29 U.S.C. Section 151.

This public policy is made effective by the provisions of Section 7. The first part of that section, dealing with the right of employees, reads:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, * * *." 61 Stat. 140, 29 U.S.C., Section 157.

We have been unable to find any phrase or clause in the Act which limits in any way the right of the employees to bargain collectively through representatives of their own choosing. Neither do we find any such limitation or restriction on the manner, method or mode of the "designation" by employees of their representatives for collective bargaining. The definitions in the Act imply an unlimited freedom of choice in both respects. Section 2 (4) reads:

> "The term 'representatives' includes any individual or labor organization."

The next subparagraph provides:

> "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 61 Stat. 137, 29 U.S.C., Section 152 (5).

The freedom of choice conferred by Section 7 to effectuate the public policy declared in Section 1 is further strengthened by the language of Section 13, which reads:

"Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right." 61 Stat. 151, 29 U.S.C., Section 163.

There is no single phrase or clause in the Act which prevents employees engaged in interstate commerce from choosing as their representative for purposes of collective bargaining a union which has not complied with Section 9 (f) (g) and (h) of the Act. In the enumeration of the unfair labor practices so carefully delineated in the language of the Act, there is no statement that it would be an unfair labor practice for a union which had not complied with Section 9 (f) (g) and (h) to represent employees. There is no statement which would make it an unfair labor practice for an employer to recognize and negotiate with a labor union as the representative of his employees if that labor union had not complied with Section 9 (f) (g) and (h). No fine is imposed upon any union which has not complied with Section 9 (f) (g) and (h). No limitation upon the right of a union to represent employees arises from a failure to file in accordance with the provisions of Section 9 (f) (g) and (h).

The processes of the Board are denied to non-complying unions. No investigation of questions concerning representation shall be made at their instance and no complaint shall issue on their charge of an unfair labor practice.

The Act nowhere declares that it shall be unlawful for a union to fail to file the reports and affidavit required by Section 9 (f) (g) and (h). The Act

nowhere declares that a strike to enforce recognition of a union which has not complied would be a strike for an unlawful objective. The Supreme Court of Louisiana has, in effect limited and restricted the statutory right protected by the express provisions of the Act. So far as we have been able to find, no decision of this Court has ever held that a state, either by statute or decision, can limit or restrict a right either granted or protected by a federal statute enacted under the Commerce Clause of the United States Constitution.

If the employees have a free and untrammelled choice of their representative, that power of choice cannot be nullified by limiting their selection to a particular kind or class or character of union. The right of free selection implies the right of free acceptance of the appointment.

To paraphrase the language of this Court in *Hill* v. *Florida*, 325 U. S. 538, at 542, we might say: The freedom of choice which Congress has expressly protected contemplates two parties to the selection; the party making the choice and the person, union or agency chosen, and this freedom cannot be thus frustrated by state legislation (and we might add, by state decision):

The language of the Court in *Hill* v. *Florida*, supra, is as follows:

> "* * * The declared purpose of the Wagner Act, as shown in its first section, is to encourage collective bargaining, and to protect the 'full freedom' of workers in the selection of bargaining representatives of their own choice. * * * Congress attached no conditions whatsoever to their freedom of choice in this respect. Their

own best judgment, not that of someone else, was to be their guide. 'Full freedom' to choose an agent means freedom to pass upon that agent's qualifications.

"* * * To the extent that Sec. 4 limits a union's choice of such an 'agent' or bargaining representative, it substitutes Florida's judgment for the worker's judgment." (Page 541)

In the more recent case of *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468 at 474-475, this Court said:

"The Court has ruled that a State may not prohibit the exercise of rights which the federal Acts protect. Thus, in Hill v. State of Florida ex rel. Watson, 325 U. S. 538, 65 S. Ct. 1373, 1375, 89 L. Ed. 1782, the State enjoined a labor union from functioning until it had complied with certain statutory requirements. The injunction was invalidated on the ground that the Wagner Act included a 'federally established right to collective bargaining' with which the injunction conflicted. International Union of United Auto, Aircraft and Agr. Implement Workers of America v. O'Brien, 339 U. S. 454, 70 S. Ct. 781, 94 L. Ed. 978, involved the strike-vote provisions of a state act which prohibited the calling of a strike until a specific statutory procedure had been followed. The state act was held to conflict not only with the procedure and other requirements of the Taft-Hartley strike provisions but also with the protection afforded by par. 7 of that Act. In Amalgamated Association of St. Elec. Ry. & Motor Coach Emp. of America v. Wisconsin Employment Relations Board, 340 U. S. 383, 71 S. Ct. 359, 95 L. Ed. 364, the state court issued an injunction under a statute which made it a misdemeanor to interrupt by strike any essential public utility services. It was held that the state statute was invalid in that it denied a right which

Congress had guaranteed under par. 7 of the Taft-Hartley Act—the right to strike peacefully to enforce union demands for wages, hours and working conditions."

In the case of *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383 at 389, this Court uses this language:

> "First. We have recently examined the extent to which Congress has regulated peaceful strikes for higher wages in industries affecting commerce. Automobile Workers v. O'Brien, 339 U. S. 454 (1950). We noted that Congress, in Sec. 7 of the National Labor Relations Act of 1935, as amended by the Labor Management Relations Act of 1947, expressly safeguarded for employees in such industries the 'right . . . to engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection,' 'e.g., to strike.' We also listed the qualifications and regulations which Congress itself has imposed upon its guarantee of the right to strike, including requirements that notice be given prior to any strike upon termination of a contract, prohibitions on strikes for certain objectives declared unlawful by Congress, and special procedures for certain strikes which might create national emergencies. Upon review of these federal legislative provisions, we held, 339 U. S. at 457:
>
> > "'None of these sections can be read as permitting concurrent state regulation of peaceful strikes for higher wages. Congress occupied this field and closed it to state regulation.'" (Citing cases)

By its decision the Supreme Court of Louisiana has qualified Section 7 of the Act. This amounts to an amendment of an Act of Congress by the decision of a State Supreme Court. The Act merely denies to non-complying unions the use of the processes of the

has no authority to act. The Joint Conference Report of the Senate House Committees which reported on the Labor Management Relations Act of 1947 states: 'It is to be observed that the primary strike for recognition (without a Board certification) was not prohibited.' In Teller, Labor Disputes and Collective Bargaining (1950 Supp.), Sec. 398.94, the author states: 'A primary strike for recognition may be called by a union though it is not certified,' citing the Senate and House Conference Report above quoted.

"In *National Labor Relations Board* v. *Dahlstrom Metallic Door Co.*, 2nd Cir., 1940, 112 F(2) 756, 757, 6 L. R.R. Man. 746, 747, the Court said: 'The contention that bargaining was not mandatory until the Board had accredited Local 307 as bargaining agent is frivolous. An employer is under a duty to bargain as soon as the union representative presents convincing evidence of majority support. Under Section 7 of the Act the right exists whether the union has or has not been certified as the bargaining representative of the employees.'"

It seems to us that the decision of this Court in *National Labor Relations Board* v. *International Rice Milling Company, Inc.*, 341 U. S. 665, and the footnote thereto are of great help in arriving at a correct decision on the question of whether the strike was unlawful. Beginning at page 672 this Court says:

"That Congress did not seek, by 8 (b) (4), to interfere with the ordinary strike has been indicated recently by this Court. This is emphasized in Sec. 13 as follows:

> 'Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish

The opinion of the Supreme Court of Louisiana makes it clear that the Court was interpreting and construing the Labor Management Relations Act of 1947. No Louisiana Statute was involved in this connection. The Louisiana Court cites three opinions of this Court, namely: *Hughes* v. *Superior Court,* 339 U. S. 460; *Teamster's Union* v. *Hanke,* 339 U. S. 470; and *Building Service Employees International Union, Local #262 et al.* v. *Gazzam,* 339 U. S. 532. None of these cases either expressly or by implication confers upon a State, Legislature or Court, the power to override the expressed public policy of the United States and to destroy a right carefully protected by the language of a Federal Statute.

In the *Hughes* case this Court said:

> "Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance."

The undisputed facts in the instant case show that the picketing was in a perfectly proper manner. The purpose which the picketing sought to effectuate was the recognition of a federally protected right to negotiate through representatives of the employees' own choosing. If the employees had a protected right to choose their own representative under the Federal Act there is no means by which the State of Louisiana could make a lawful objective under Federal tests unlawful under any sort of state test.

The same reasoning would put the opinions in the *Hanke* and *Gazzam* cases to one side.

> that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice . . . If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election . . ."

On this right to require an election, the United States Court of Appeals for the Ninth Circuit, in *National Labor Relations Board* v. *Trimfit of California, Inc.*, 211 F(2nd) 206 (at 209) (1954), stated:

> "Respondent contends that it had no duty to bargain until the union had established its majority status by a Board election. There is no absolute right vested in an employer to demand an election. *Iob* v. *Los Angeles Brewing Co.*, 9 Cir., 1950, 183 F(2nd) 398. If an employer in good faith doubts the union's majority, he may, without violating the Act, refuse to recognize the union until its claim is established by a Board election. A doubt professed by an employer as to the union's majority claim must be genuine. Otherwise the employer has a duty to bargain and may not insist upon an election. *Joy Silk Mills* v. *N.L.R.B.*, 1950, 87 U. S. App. D.C. 360, 185 F(2d) 732."

In *National Labor Relations Board* v. *Parma Water Lifter Co.*, 211 F(2d) 258 (at 261) (1954), we find this language:

> "Finally, it sems to be urged that a Union is entitled to recognition as bargaining representative only after a Board conducted representation election. It is well settled, however, that the designation may be made by other means, one of the most common of which is the signing of Union authorization cards."

On this same point, i.e., that the employer cannot require an election where the employees have selected their bargaining agent by a majority vote, the United States Court of Appeals for the Seventh Circuit in *National Labor Relations Board* v. *International Newspapers, Inc.*, 210 F(2d) 501 (1954) said:

> "Although the prize of recognition must not be employed coercively to influence the employees in making their decision, once indisputable proof of majority choice is presented to the employer, the Act imposes on him a duty to award recognition to the agent so chosen by his employees. N.L.R.B. v. W. T. Grant Co., 9 Cir., 199 F. 2d 711, certiorari denied 344 U. S. 928, 73 S. Ct. 497, 97 L. Ed. 714; N.L.R.B. v. Gutmann & Co., 7 Cir., 121 F. 2d, 756; Stewart Warner Corp. v. N.L.R.B., 4 Cir., 194 F. 2d 207; N.L.R.B. v. Standard Steel Spring Co., 6 Cir., 180 F. 2d 942; N.L.R.B. v. Flotill Products, Inc., 9 Cir., 180 F. 2d 441.
>
> "Reiteration of what has been said in these cases would serve only to lengthen this memorandum unduly. The decisive question in any case is whether there has been an uninfluenced expression of majority will; it matters not how that will be expressed. Although the result of a secret election may well be the most convincing means of expression, the election medium is by no means exclusive. However expressed, an employer is bound by the employees' determination. In doing so, he should be free of charges of unfair labor practices absent substantial evidence indicative of bad faith."

The position of the National Labor Relations Board on the point that the employer does not have a right to demand an election when the bargaining agent has been selected by the employees is shown in *Beaver*

Machine & Tool Co., 97 N.L.R.B. 33, 34, in which the Labor Board stated as follows:

> "As we have frequently held, an employer who, in good faith, doubts the majority status of a union which demands recognition as the bargaining representative of his employees, may lawfully insist that the union prove its majority in a Board-conducted election. But if, in insisting upon an election, the employer is motivated not by a bona fide doubt as to the union's majority standing, but by a rejection of the collective bargaining principle or a desire to gain time in which to undermine the union, the demand for an election is no defense to a refusal-to-bargain charge, if the union in fact represented a majority of employees in an appropriate unit at the time of the refusal to bargain."

The following cases hold that where the employer, in good faith, has no doubt that a particular union actually represents the majority of the employees in a bargaining unit, his refusal to recognize that union and bargain in good faith with it and his insistence on a prior election is an unfair labor practice under the Act.

N.L.R.B. v. *Armco Drainage & Metal Products*, 220 F.(2d) 573, 6th Cir. 1955.

N.L.R.B. v. *Poultry Enterprises, Inc.*, 207 F.(2d) 522, 5th Cir. 1953.

N.L.R.B. v. *Jackson Press, Inc.*, 201 F.(2d) 541, 7th Cir. 1953.

Joy Silk Mills v. *N.L.R.B.*, 185 F.(2d) 732. Dist. Col. Cir. 1950, Certiorari denied 341 U. S. 914.

N.L.R.B. v. *Kobritz*, 193 F.(2d) 8(14), 1st Cir. 1951.

Iob v. *Los Angeles Brewing Co. Inc.*, 183 F.(2d) 398, 9th Cir. 1950.

N.L.R.B. v. *Clearfield Cheese Co. Inc.*, 213 F.(2d) 70, 3rd Cir. 1954.

When the employer refused to recognize their chosen agent, the employees had a right to strike and set up a picket line in order to obtain recognition. The picket line was put up not only for a lawful purpose but for a protected purpose.

Point Number IV—Picketing Is Still Protected by the Free Speech Provision of the First Amendment

This Court has put picketing under the Free Speech Amendment of the United States Constitution in the following cases:

Senn v. *Tile Layers Protective Union*, 301 U. S. 468.

Thornhill v. *Alabama*, 310 U. S. 88.

Carlson v. *People of State of California*, 310 U. S. 106.

American Federation of Labor v. *Swing*, 312 U. S. 321.

Bakery and Pastry Drivers, et al. v. *Wohl*, 315 U. S. 769.

Cafeteria Employees Union, Local 302 et al. v. *Angelos*, 320 U. S. 293.

We realize, of course, that subsequent decisions of this Court have demonstrated that picketing is not always the equivalent of free speech. We submit, however, that no opinion of this Court has held that picketing of the kind and for the purpose shown by the undisputed evidence in this case would not be

protected as the equivalent of free speech. If the picketing enjoined by the Louisiana Court is the equivalent of free speech it is beyond the reach of that Court under the Fourteenth Amendment.

Point Number V—The Petition for Injunction Charged an Unfair Labor Practice

Paragraph 10 of the Petition for an Injunction reads:

> "Petitioner shows that the picketing presently engaged in by the defendant union has for its unlawful purpose the forcing of petitioner to interfere with the rights of its employees as expressed by the legislature of Louisiana, by requiring petitioner to deal with the defendant union as a representative of its employees in the absence of their selection of said union as their representative." (R. 4)

The quoted paragraph charges the unfair labor practice of employer coercion. The same sort of unfair labor practice to wit, employer coercion, came before this court in *Garner* v. *Teamsters Union*, 346 U. S. 485. The inability of a State Court to adjudicate such a charge is clearly set forth in the recent case of *Weber* v. *Anheuser-Busch, Inc., supra,* at page 475:

> "A State may not enjoin under its own labor statute conduct which has been made an 'unfair labor practice' under the federal statutes. Such was the holding in the *Garner* case, *supra.* The Court pointed out that exclusive primary jurisdiction to pass on the union's picketing is delegated by the Taft-Hartley Act to the National Labor Relations Board. See also *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, 338 U. S. 953; *Building Trades Council* v. *Kinard Construction Co.*, 346 U. S. 933. And in

Capital Service, Inc. v. *Labor Board*, 347 U. S. 501, a picket line established at retail stores to induce the organization of a manufacturer's employees was enjoined by the State as contrary to its public policy. This Court granted a limited certiorari which assumed that exclusive jurisdiction over the subject matter was in the National Labor Relations Board. The Board was allowed to obtain an injunction against enforcement of the conflicting state court injunction."

The failure of the employer to prove the allegations of paragraph 10 of its petition is of no importance. The jurisdictional question is necessarily determined by the allegations in the pleading. For example, if a man filed a libel against a ship in a State Court, that Court would have no jurisdiction although the undisputed evidence at the trial showed the man was injured on land. In the same manner, if he filed a bill in equity in a law court, that court would be without jurisdiction. The pleading is but the password and countersign with which the litigant obtains entry into the proper forum. Here the controversy presented by the petition prevents state jurisdiction. See *Garner* v. *Teamster's Union, supra.*

The proper procedure for the State Court is set up in this language of the *Weber* decision:

"But where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance." (Page 481).

Point Number VI—The Position of the Labor Board

The present attitude of the Labor Board will be presented to this Court in a brief by the Solicitor General of the United States. The attitude of the Board was expressed on October 10, 1955, in a case in which an affiliate of this Petitioner Union was involved, entitled *David G. Leach and Doyle H. Wallace, d/b/a Brookville Glove Company and Westie K. Shick, et als.*, Case No. 6-CA-770 in manuscript, 114 N.L.R.B. #52. The following is the statement of the Board's position at that time:

> "The Respondents contend, however, that the strike was illegal and that the strikers are not entitled to the protection of the Act because they participated in a strike whose objective was recognition of a labor organization not in compliance with Section 9 (h) of the Act.
>
> "We find no merit in this contention. There is no precedent in support of the Respondents' position.[1] On the contrary, in Rubin Bros., 99 N.L.R.B. 610, 619, the Board rejected a contention similar to that now urged by the Respondents. The Act does not proscribe bargaining with a non-complying union; indeed, consonant with public policy, an employer may voluntarily recognize and deal with such a union.[2] If Congress had intended the Act to have the effect urged by the Respondents, it easily could have inserted an express provision in the statute to accomplish such result. This, Congress did not do. While the union in this case could not use the processes of this Board to obtain recognition as bargaining representative in view of its failure to comply with Section 9 (h) of the Act, we are not persuaded that Congress intended to withhold protection of the Act against discrimination from employees simply because they engaged in acts of self-help, otherwise

legitimate, as members or adherents of a non-complying labor organization.[3] Hence we conclude that the strike in this case was a protected concerted activity.'"[4]

CONCLUSION

WHEREFORE, we respectfully pray that each of the questions presented for review be answered by this Court in the affirmative and the judgment of the Supreme Court of Louisiana be reversed and vacated and that the injunctions be dissolved and the suit dismissed accordingly.

Respectfully submitted,

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Proof of Service

I hereby certify that I have deposited in the United States Post Office in Washington, D. C., with sufficient air mail postage thereon to insure delivery, copies of the foregoing Brief and Argument and annexed appendix, addressed to all Counsel for Arkansas Oak Flooring Company, Respondent, one copy being addressed to the Hon. Grove Stafford to his office in the Guaranty Bank Building, Alexandria, Louisiana; one copy to the Hon. John Pitts, to his office in the Guaranty Bank Building at Alexandria, Louisiana; and one copy to the Hon. Richard C. Keenan, to his office in the Whitney Building, New Orleans, Louisiana, on this the ..... day of December, 1955.

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I further certify that I have placed in the United States mail at the United States Post Office at Washington, D. C., three (3) copies of the foregoing Brief and Argument and annexed appendix addressed to the Solicitor General, Department of Justice, Washington, 25, D. C., with postage thereon fully prepaid to insure delivery, on this the ..... day of December, 1955.

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APPENDIX

Constitutional Provisions and Statutes

United States Constitution, Amendment I, U.S.C.A.:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment XIV, Section 1, U.S.C.A. (Excerpt):

* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, Article I, Section 8:

Clause 1.

The Congress shall have Power * * *

Clause 3.

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Labor Management Relations Act of 1947

Section 1, Last Paragraph:

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining

and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. 61 Stat. 136, 29 U.S.C., Section 151.

Section 2 (4) (5):

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work. 61 Stat. 137, 29 U.S.C., Section 152 (4) (5).

Section 7:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 158 (a) (3) of this title. 61 Stat. 140, 29 U.S.C., Section 157.

Section 8 (a) (3) (Excerpt):

(a) It shall be an unfair labor practice for an employer—

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to

encourage or discourage membership in any labor organization: Provided, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159 (a) of this title, in the appropriate collective bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 159 (f), (g), (h) of this title, and (ii) unless following an election held as provided in section 159 (e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement. * * *. 61 Stat. 140, 65 Stat. 601, 29 U.S.C., Section 158 (a) (3).

Section 8 (a) (5):

(a) It shall be an unfair labor practice for an employer—

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title. 61 Stat. 140, 65 Stat. 601, 29 U.S.C., Section 158 (a) (5).

Section 8 (b) (2):

(b) It shall be an unfair labor practice for a labor organization or its agents—

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership. 61 Stat. 140; 65 Stat. 601, 29 U.S.C., Section 158 (b) (2).

Section 9 (f), (g) and (h):

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000.00 and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor; and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor. 61 Stat. 143, 65 Stat. 601, 29 U.S.C., Section 159 (f).

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members

annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, and no complaint shall issue under section 160 of this title with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection. 61 Stat. 143, 65 Stat. 601, 29 U.S.C., Section 159 (g).

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of sections 286, 287, 1001, 1022 and 1023 of title 18 shall be applicable in respect to such affidavits. 61 Stat. 143, 65 Stat. 601, 29 U.S.C. 159 (h).

Section 13:

Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right. 61 Stat. 151, 29 U.S.C., Section 163.

Jurisdictional Statute

Title 28, United States Code, Section 1257 (3), reads in part as follows:

Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * * * *

By writ of certiorari, * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution, * * * or statutes of * * * the United States.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 227

UNITED MINE WORKERS OF AMERICA, ET AL.,
Petitioners,

versus

ARKANSAS OAK FLOORING COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Louisiana.

BRIEF FOR RESPONDENTS IN OPPOSITION.

GROVE STAFFORD,
710 Guaranty Bank Building,
Alexandria, Louisiana;

JOHN L. PITTS,
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Alexandria, Louisiana;

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BRIEF FOR RESPONDENTS IN OPPOSITION.

QUESTIONS PRESENTED FOR REVIEW.

The picketing enjoined by the state court in this case was by a union which admittedly has refused to comply with the Labor Management Relations Act by t king the non-communist oath and furnishing financial data required by the Act.

1. Is recognition picketing by such a union an "unfair labor practice" such as would give the Na-

tional Labor Relations Board exclusive jurisdiction and preclude state court action?

2. Is such picketing by a non-complying union an activity protected by the Act?

By stating, in their presentation of questions for review, that the picketing enjoined was that of "a majority designated union representative", petitioners beg one of the basic questions involved in the case. It was precisely for the reason that the petitioning union had made it impossible for the National Labor Relations Board to determine the validity of its *claim* to majority designation that the injunction against picketing was issued.

Petitioner also seeks to present a question involving alleged infringements upon the guaranties of the First and Fourteenth Amendments. It is submitted that no serious question is thus presented. The Court has made itself clear that the Constitution does not preclude a state from enforcing by a ban on picketing, a public policy, whether declared in its statutes or in the opinion of its highest court, such as Louisiana has enforced in this case. *Giboney v. Empire Storage and Ice Company*, 336 U. S. 490, 93 L. Ed. 834, 69 S. Ct. 684; *Hughes v. Superior Court*, 339 U. S. 460, 94 L. Ed. 985, 70 S. Ct. 718; *International Brotherhood v. Hanke*, 339 U. S. 470, 94 L. Ed. 995; *Building Service Employees International Union v. Gazzam*, 339 U. S. 532, 94 L. Ed. 1045. If there is a question presented worthy of review it is one of preemption by the National Labor Relations Act, as amended. *Garner v. Teamsters Union*, 346 U. S. 485, 98 L. Ed. 228; *Weber v. Anheuser-Busch, Inc.*, 75 S. Ct. 480.

ARGUMENT.

THE PETITION SHOULD BE DENIED BECAUSE (a) PRIMARY PICKETING BY A UNION FOR RECOGNITION IS NOT MADE AN UNFAIR LABOR PRACTICE; and (b) PICKETING BY A NON-COMPLYING UNION FOR EXCLUSIVE RECOGNITION IS NOT PROTECTED BY THE ACT.

Unless there has been Federal preemption the decision of the Louisiana Supreme Court should stand. It is submitted that applicable decisions of the Court control this question, and there is no reason for the granting of the writ.

There can be no Federal preemption, in this case, unless the conduct found violative of Louisiana law was made an unfair labor practice by the National Labor Relations Act, as amended, or the activity was protected by that Act. *Weber v. Anheuser-Busch, Inc., supra.*

As to the object and purpose of the picketing the Supreme Court of Louisiana made this finding:

> "* * *. In the instant case the picketing was engaged in for the sole purpose of compelling the employer to recognize as the legally constituted agent of its employees a union that has no legal status before the National Labor Relations Board because of its failure and refusal to comply with the provisions of the Act requiring the filing of certain information relative to structural and financial matters, as well as non-communist oaths. This is clearly not an act denounced as an unfair-labor

practice by the amendment of 1947." (Petitioners' Appendix A, p. 25).

There was only one employer and one union involved and the picketing was admittedly primary picketing for recognition (Pet. p. 6). It must be emphasized that there was neither allegation nor finding that the union's purpose in picketing was to coerce the employer into compelling or influencing its employees to join the union. Cf. *Garner v. Teamsters Union, supra.*

A. PRIMARY PICKETING BY A UNION FOR RECOGNITION IS NOT MADE AN UNFAIR LABOR PRACTICE.

All of the unfair labor practices which may be committed by a union are enumerated in the sub-sections of Section 8 (b) (158 U. S. C. (b)) of the National Labor Relations Act. The conduct made the subject of the petition herein was not a restraint or coercion of an employer in the selection of the person to do his negotiating for him (Section 8 (b) (1) (B)), an attempt to cause or the causation of discrimination (Section 8 (b) (2)), a union refusal to bargain (Section 8 (b) (3)), a secondary boycott (Sections 8 (b) (4) (A) and (B)) a strike against a pending Board certification (Section 8 (b) (4) (C)), a jurisdictional dispute (Section 8 (b) (4) (D)), the imposition of excessive dues or initiation fees (Section 8 (b) (5)), or featherbedding (Sections 8 (b) (6)). The only sub-section of Section 8 (b) which would possibly be construed as applying to a recognition strike by a non-complying union, where no other union is certified as the bargaining representative is Section 8 (b) (1) (A) which makes it: "an unfair labor practice for a labor organiza-

tion or its agents . . . to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7 . . ."

The National Labor Relations Board, charged with administration of the Act, made it abundantly clear, without the disapproval of a reviewing Court, that it does not construe Section 8 (b) (1) (A) to apply to a recognition strike. In deciding a case based upon a charge filed within two months after the effective date of the Taft-Hartley amendments the Board arrived at a construction of Section 8 (b) (1) from which it has not since deviated, which would preclude consideration of a charge, the gravamen of which was a recognition strike by a non-complying union. In the matter of Perry Norvell Company, 80 N. L. R. B. 225, 239 (1948), it was stated:

> "Assuming, arguendo, the validity of the premises upon which the General Counsel has based his argument, the conclusion does not follow that the strike violated the act. Section 8 (b) (1) (A) was not intended to have the broad and almost limitless reach which the General Counsel urges upon the Board. The legislative history of the Act shows that, by this particular section, Congress primarily intended to proscribe the coercive conduct which sometimes accompanies a strike, but not the strike itself. By Section 8 (b) (1) (A), Congress sought to fix the rules of the game, to insure that strikes and other organizational activities of employees were conducted peaceably by persuasion and propaganda and not by physical force, or threats of force, or of economic reprisal. In that Section, Congress was aiming at means, not at ends."

Congress in enacting the Taft-Hartley Amendments did not intend that the picketing herein be made an unfair labor practice, for "the primary strike for recognition (without a Board certification) is not proscribed". S. Rep. No. 105, 80th Cong. 1st Sess. (Pt. 1) 22. Cf. *National Labor Relations Board v. International Rice Milling Co.*, 341 U. S. 665, 95 L. Ed. 1277.

The former General Counsel of the National Labor Relations Board, the statutory officer (U. S. C. 153 (d)) who determines, independently of the Board, whether charges warrant the issuance of a complaint under the Act stated, in an addre before the Arkansas Bar Association on May 13, 1954, that the Act does not prohibit the type of recognition strike which we here have:

> "Another, interesting and difficult question arises in connection with organizational or recognition strikes in circumstances where the union is not the clear representative of the majority of the employees. Thus, for example, assume that two unions are vying for recognition as the exclusive bargaining representative of a given group of production and maintenance employees. Both conduct vigorous campaigns to win majority support among the employees; each has substantial support among the employees as evidenced by the signatures of employees to union cards; indeed, there are overlapping cards, some employees signing cards for one union one day and for other union the next day.

In this not unusual situation the Board has held the employe is duty bound to withhold recognition from either union until the employees have made a choice in an election conducted by the Board. Suppose, however, that one of the two unions strikes for immediate recognition. It has been held that such a strike is not a protected activity; it is designed to compel the employer to grant what it is his duty to withhold and thus to implicate him in a wrong. Hoover Co. v. N. L. R. B., 191 F. (2d) 380 (6th Cir. 1951), N. L. R. B. v. Electronics Equipment Co., 194 F. (2d) 650 (2nd Cir. 1952). But neither, as I see it, is the strike prohibited by the National Labor Relations Act as an unfair labor practice. Bogalusa Motors, Inc., Case No. 15-CB-117, Administrative Appeal denied Feb. 19, 1954. *Congress has seen fit to make only one form of direct recognition strike unlawful as an unfair labor practice, namely, a strike for recognition by one union in the face of the Board's certification of another union as the exclusive bargaining representative.* And this is not an area, in my view, in which as administrators we are free to innovate. Many proposals have been advanced in Congress to prohibit other forms of recognition strikes; much discussion pro and con has taken place, but Congress has not yet seen fit to act. We cannot rush in, it seems to me, where Congress has been so conspicuously reluctant to tread." (Emphasis supplied). 34 Lab. Rel. Rep. 67 (1954).

B. PICKETING BY A NON-COMPLYING UNION FOR EXCLUSIVE RECOGNITION IS NOT PROTECTED BY THE ACT.

The petitioning union is a labor organization which, as a matter of policy, has purposely refused to have its officers file non-communist affidavits, and purposely refused to give proof of financial disclosures to its members, as required by the Act. This is no case of an inadvertent or temporary failure to comply. To the contrary the petitioning union, in requesting a writ of review, openly and avowedly seeks the Court's approval for the continuation of what it calls its "self-help" method of organization. To put it another way, the petitioning union desires to be free to compel recognition by the coercive effect of the picket line, rather than to have recognition awarded to it after orderly election processes in accordance with law.

The National Labor Relations Act, as amended, affords protection to unions engaged in peaceful strikes and picketing for recognition, but only to those unions which make themselves amenable to its processes (Section 9 (f) (g) and (h)). Thus, the petitioning union has made it impossible for the National Labor Relations Board either to certify it as a majority representative of its employees, or to order an employer to bargain with it either with or without certification. Petitioner has no remedy with the Board, the body charged with affording to unions the Act's protection. By adhering to a policy of non-compliance the petitioning union has waived any right to the Act's protection.

The State Supreme Court in this case held that this non-complying union cannot compel the employer to recognize it as the bargaining agent of the employees. This holding is not contrary to existing jurisprudence. Petitioners have cited cases holding that there is no impediment under the act to voluntary recognition, without the union involved being formally certified through Labor Board election procedure, and that an employer may not hide behind insistence upon Labor Board certification as a reason for refusal to bargain while destroying the unions majority by the commission of unfair labor practices. With these cases, none involving non-complying unions, *National Labor Relations Board v. Kobritz*, 193 F. (2d) 8 (14) 1st Cir. (1951); *Iob v. Los Angeles Brewing Co.*, 183 F. (2d) 398, 404; and *N. L. R. B. v. Clearfield Cheese Co.*, 213 F. (2d) 70, 3rd Cir. (1954), we do not disagree.

However, where an employer refuses to recognize or bargain with a union and cites non-compliance as his reason for refusal, the Labor Board will not force recognition or bargaining. This is true even though the union may actually represent a majority of the employees. Matter of *New Jersey Carpet Mills*, 92 N. L. R. B. 604 (1950).

The holding in *N. L. R. B. v. Reed & Prince Mfg. Co.*, 205 F. (2d) 131, 1st Cir. (1953) that a union momentarily out of compliance at the time of the request to bargain, may later achieve compliance and compel bargaining through the Board's processes is inapplicable.

Equally inapplicable are *N. L. R. B. v. Pecheur Lozenge Co.*, 209 F. (2d) 393, 2nd Cir. 1953); *N. L. R. B. v. Tennessee Egg Co.*, 201 F. (2d) 370 6th Cir. (1953).

The union here involved, as its petition discloses, is irrevocably committed to a policy of non-compliance, and complains principally that the decision below amounts "to a death sentence" (Petition, page 17). In short, petitioning union seeks the protection of the Act, but is unwilling to comply with its provisions. If this be a "death sentence", then it certainly is self-inflicted, and could be avoided simply by compliance with law.

The court's reasoning in *N. L. R. B. v. Dant & Russell*, 344 U. S. 374, 382, 73 S. Ct. 335, 97 L. Ed. 407, 413 (1953) disposes of the petitioning union's contention in this regard, adversely to it, beyond need for further exposition. In that decision, which should control here, the Court said:

> "Respondent urges that the above construction of §9 (h) weakens the over-all purpose of the section in that it allows the Board to provide non-complying labor organizations with substantial benefits by the filing of the charge without any assurance of compliance.
>
> "Phrased differently, the argument is that the benefits of the Act may not flow to a labor organization unless the non-Communist affidavits are on file. We agree with the argument, and believe that it is in accord with our interpretation of §9 (h). Since the remedial processes of the Act to cure practices forbidden by §8 (a) (3) can only be in-

> voked by the issuance of a complaint, we do not see how a non-complying labor organization can be said to benefit from the fact that it need not be in compliance at the date of the filing of the charge. The filing of a charge, which is subject to dismissal within 10 days under the Board's rule, unless reasonable assurance is given by the filing union that it will comply with the affidavit requirement, is of no benefit to the charging union unless it is followed by the issuance of a complaint."

What the Court said in the *Dant & Russell* case with regard to charges involving violations of Section 8 (a) (3) (individual discrimination) applies all the more forcibly to charges involving violations of Section 8 (a) (5) (refusal to bargain with a union). It is the petitioning union which petitioners assert to be within the protection of the Act, despite its policy of non-compliance. The holding of the Louisiana Supreme Court that the petitioning union could not compel bargaining is certainly consistent with the Court's interpretation in *Dant and Russell* "that the benefits of the Act may not flow to a labor organization unless the non-Communist affidavits are on file."

To say that a union which, as a matter of policy, refuses to comply with the Act's filing provisions, is unprotected by its remedial provisions is not to say that individual employees lose the protection afforded them by the Act. Any individual may be assured of the Act's protection by filing charges with the Board in his individual capacity. *N. L. R. B. v. Southern Furniture Mfg. Co.*, 194 F. (2d) 59, 5th Cir. (1952); *N. L. R. B. v. Augusta Chemical Company*, 187 F. (2d) 63, 5th Cir. (1951);

N. L. R. B. v. Clausen, 188 F. (2d) 439, 3rd Cir. (1951). But the caution exercised by the Courts and the Board in denying relief under the Act where the proceedings, though purportedly filed on an individual basis, were actually filed by an individual fronting for a non-complying labor organization, demonstrates how untenable is petitioners' position that the Act affords the petitioning union any protection, and that the employer here could be compelled to bargain. *N. L. R. B. v. Happ Bros., Inc.*, 196 F. (2d) 195, 5th Cir. (1952); *N. L. R. B. v. Alside*, 192 F. (2d) 678, 6th Cir. (1951); *White v. Douds*, 80 F. Supp. 402 D. C. S. D. NY. (1948); *Timm Industries, Inc.*, 104 N. L. R. B. 359 (1953); *Woods Parts, Inc.*, 101 N. L. R. B. 445 (1952).

If a state has not the right to protect its employer citizens from the irreparable injury caused by a recognition picket line thrown up by a union which refuses to permit lawful and orderly determination of the question of representation, then the employer is placed in a hopeless dilemma. Under ordinary circumstances, *i. e.*, when confronted by a recognition demand and bargaining request by a union either in compliance with the Act or willing to make itself amenable to Board processes, an employer may demand that the union seek certification under 29 U. S. C. 159 (c), or himself seek an election under that Section. So long as the employer's demand for an election is not made for the purpose of seeking delay in order to undermine the union his right to an election is held by the Board, with Court approval, to be absolute.

Even should it later develop that the union at the time it made its request was, in fact, the majority representative on the basis of signed cards there will be no finding of refusal to bargain where there is no demonstration of bad faith in seeking an election. *Beaver Machine and Tool Co., Inc.*, 97 N. L. R. B. 33 (1951); *Walmac Co.*, 106 N. L. R. B. 1355 (1953); *New Jersey Carpet Mills*, supra; *National Labor Relations Board v. James Thompson and Co., Inc.*, 208 F. (2d) 743, 2nd Cir. (1953).

Thus a complying union can be forced to an election. *Matter of Herman Loewenstein, Inc.*, 75 N. L. R. B. 377. The petitioning union here, a non-complying union, seeks to be placed in a better position than a complying union. Surely Congress did not intend such a situation.

CONCLUSION.

For the foregoing reasons we respectfully submit that the petition for writ of certiorari be denied.

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CERTIFICATE.

I certify that I, a member of the bar of this Court, this day deposited in a United States mail box, air mail, first class postage, prepaid, copies of the above and foregoing brief in opposition addressed as follows:

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SUPREME COURT OF THE UNITED STATES

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 227

UNITED MINE WORKERS OF AMERICA, ET AL.,
Petitioners,

versus

ARKANSAS OAK FLOORING COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

BRIEF FOR RESPONDENT.

STATUTES.

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QUESTIONS PRESENTED FOR REVIEW.

Respondent is dissatisfied with petitioners' presentation of the questions for review and submits that a more proper presentation is as follows:

The picketing involved herein was by a union which had never theretofore been recognized as the majority representative of the employees of respondent, nor certified as such by the National Labor Relations Board, and which had made such certification impossible by, **as a matter of continued policy,** refusing to comply with the provisions of Sub-Sections (f), (g) and (h) of Section 9 of the Labor Management Relations Act of 1947 as amended. The picketing had for its object the obtaining of recognition of the union by respondent as collective bargaining representative of its employees.

1. Is recognition picketing by such a union under such circumstances made an unfair labor practice by the Act, thus precluding state regulation?

2. Apart from the question of whether individual employees are protected from discriminatory employer action in such a case, does the Act preclude state regulation of recognition picketing by such a union?

3. Even though the Labor Management Relations Act may not preclude state regulation of such picketing, is it protected by Articles I and XIV of the United States Constitution?

By stating, in their presentation of questions for review, that the picketing was that of "a majority desig-

nated union representative", petitioners beg one of the basic questions involved in the case. It was precisely for the reason that the petitioning union made it impossible for the National Labor Relations Board to determine the validity of its **claim** to majority designation that the injunction against picketing was issued.

ARGUMENT.

1. Action of Court Below Not Unconstitutional.

The Supreme Court of Louisiana found the conduct of petitioners to be unlawful in that State. The Court held:

> "It necessarily follows that inasmuch as the Union in the instant case has, by its own admission and as certified to by the National Labor Relations Board, failed and refused to comply with the provisions of Sections 9 (f) (g) and (h) of the 1947 amendment, the Board is without jurisdiction to entertain any question with respect to its protestations of majority representation and/or unfair labor practices, for it is not only ineligible for certification, but cannot compel the employer to recognize it as the representative of its employees. The plaintiff's refusal to recognize the Union was, therefore, not in violation of any obligation imposed by law, and the picketing in furtherance of this unlawful objective was the employment of economic pressure illegally for the purpose of causing the employer irreparable injury for which it has no adequate administrative or legal remedy—injurious conduct which the state has jurisdiction to relieve. See, Stewart-Warner Corp. v. National

Labor Relations Board, 194 F. (2d) 207;" Goodwins, Inc., v. Hagedorn, 303 N. Y. 300, 101 N. E. (2d) 697; Fulford v. Smith Cabinet Mfg. Co., 118 Ind. App. 326, 77 N. E. (2d) 755; Cordey China Co. v. United Mine Workers of America, 25 N. J. Super. 514, 96 A. (2d) 696; and Simmons v. Retail Clerks Union Local 770, 14 Labor Cases 73,335." (R. 80-81).

Petitioners argue, in effect, at Page 22 of their brief, that the court below made no finding of violation of State law or public policy, but that the court found the conduct to be unlawful because of violation of the National Labor Relations Act. Reference to the Court's opinion demonstrates the fallacy of this contention. The Court below could not have been more emphatic in its finding that no violation of that Act was involved. The Louisiana Supreme Court said:

"In the instant case the picketing was engaged in for the sole purpose of compelling the employer to recognize as the legally constituted agent of its employees a union that has no legal status before the National Labor Relations Board because of its failure and refusal to comply with the provisions of the Act requiring the filing of certain information relative to structural and financial matters, as well as non-communist oaths. This is clearly not an act denounced as an unfair labor practice by the amendment of 1947." (R. 73-74).

It is true that the Court, in its opinion, explored in great detail the possibility of remedy before the National Labor Relations Board, and into the ability and

authority of the Board to act in the matter. The Court had before it the then recently decided case of *Garner v. Teamsters Union*, 346 U. S. 485, 98 L. Ed. 228, 74 S. Ct. 161, wherein state courts were enjoined not to enter upon fields where Congress had afforded relief through the processes of the National Labor Relations Board. The Louisiana Supreme Court had to decide the availability of federal relief before it could even consider the question of state law violation. That the Louisiana Supreme Court was correct in its approach was demonstrated by subsequent decisions of this Court. In *Weber v. Anheuser-Busch*, 348 U. S. 468, 99 L. Ed. 386, this Court, in reference to a portion of its opinion in the *Garner* case said:

> "By the Taft-Hartley Act, Congress did not exhaust the full sweep of legislative power over industrial relations given by the Commerce Clause. Congress formulated a code whereby it outlawed some aspects of labor activities and left others free for the operation of economic forces. As to both categories the areas that have been preempted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion of state action. Such was the situation in Garner v. Teamsters, C. & H. Local Union (U. S.) supra. But as the opinion in that case recalled, the Labor Management Relations Act 'leaves much to the states, though Congress has refrained from telling us how much.' 346 U. S. at 488. This penumbral area can be rendered progressively clear only by

the course of litigation. Regarding the conduct here in controversy, Congress has sufficiently expressed its purpose to bring it within federal oversight and to exclude state prohibition, even though that with which the federal law is concerned as a matter of labor relations be related by the State to the more inclusive area of restraint of trade.

"We realize that it is not easy for a state court to decide, merely on the basis of a complaint and answer, whether the subject matter is the concern exclusively of the federal Board and withdrawn from the State."

And in *Amalgamated Clothing Workers of America v. Richman Bros.*, 99 L. Ed. 422, this Court emphasized that it was the responsibility of **state courts** initially to determine the "not easy" decision as to what had been withdrawn from them by federal legislation saying:

"Neither the proceedings in this case, nor the history of state court actions since the decision in Garner v. Teamsters, C. & H. Local Union, 346 U. S. 485, 98 L. Ed. 228, 74 S. Ct. 161, demonstrate recalcitrance on the part of state courts to recognize the rather subtle line of demarcation between exclusive federal and allowable state jurisdiction over labor problems. In its effort to define what has been withdrawn from the States and what has been left them, the opinion in Garner, decided just last Term, was hedged with qualifications, even in a case which dealt only with state court enforcement of a state labor policy as such."

The Court finally concluded:

> "In any event, if resort to a state court may not be circumvented by the power of the Board to entertain such a complaint, we are bound to repeat that, insofar as a penumbral region must remain between state and federal authority touching industrial relations until finally clarified by definitive rulings here or further legislation by Congress, state litigation must, in view of § 2283, be allowed to run its course, including the ultimate reviewing power in this Court."

The Louisiana Supreme Court, having concluded that the federal legislation did not preclude its action, proceeded to conclude that the picketing "was the employment of economic pressure illegally for the purpose of causing the employer irreparable injury for which it has no adequate administrative or legal remedy—injurious conduct which the state has jurisdiction to relieve." (R. 80). If the Louisiana Supreme Court was correct in its conclusion that federal legislation did not preclude its action, there is no question of its right to take the action it did. This Court has made itself clear that the Constitution does not preclude a state from enforcing by a ban on picketing, a public policy, whether declared in its statute or in the opinion of its highest court, such as Louisiana has enforced in this case. *Giboney v. Empire Storage and Ice Co.*, 336 U. S. 490, 93 L. Ed. 834, 69 S. Ct. 684; *Hughes v. Superior Court*, 339 U. S. 460, 94 L. Ed. 985, 70 S. Ct. 718; *International Brotherhood v. Hanke*, 339 U. S. 470, 94 L. Ed. 995; *Building Service Employees International Union v. Gazzam*, 339 U. S. 532, 94 L. Ed. 1045.

2. The Conduct Enjoined Was Not An Unfair Labor Practice.

All of the unfair labor practices which may be committed by a union are enumerated in the sub-Sections of Section 8 (b) of the Labor Management Relations Act of 1947. The conduct enjoined herein was not restraint or coercion of an employer in the selection of the person to do his negotiating for him (Section 8 (b) (1) (B)), an attempt to cause or the causation of discrimination (Section 8 (b) (2)), a union refusal to bargain (Section 8 (b) (3)), a secondary boycott (Section 8 (b) (4) (A) and (B)), a strike against a current Board certification (Section 8 (b) (4) (C), a jurisdictional dispute (Section 8 (b) (4) (D)), the imposition of excessive dues or initiation fees (Section 8 (b) (5)), or featherbedding (Section 8 (b) (6)).

The leading case treating with the right of a state to enjoin recognition picketing engaged in prior to determination by the NLRB of the majority representative is *Goodwins v. Hagedorn*, 303 N. Y. 300, 101 N. E. (2d) 697 (N. Y. Ct. App., 1951). As to the possible application of Section 8 (b) of the National Labor Relations Act the Court of Appeals for New York said:

> "Nor does the Federal Labor Management Relations Act (as we see it) disable our State courts from acting in the circumstances of this case. For one thing, the activity of the defendant union is not within any of the categories of union unfair labor practices denounced in subdivision (b) of section 8 of the Federal statute (U. S. Code, tit. 29, § 158). The provisions of the Federal stat-

ute that come closest to touching this case are contained in paragraph (4) of subdivision (b) of section 8 which says that it shall be an unfair labor practice for a labor union or its agents to 'engage in, or to induce or encourage the employees of any employer to engage in, a strike * * * where an object thereof is: * * * (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees * * *; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees'. The picketing conducted by the defendant union does not fall within the foregoing definitions of unfair labor practices under the Federal act because, as we have already noticed, no strike is involved in this case and no union has yet been certified as exclusive collective bargaining agent for the employees in question. Thus this aspect of the case presents no question of conflict with the Federal statute."(1)

Petitioners urge, citing *Weber v. Anheuser-Busch*, that respondent, in the trial court, alleged an unfair labor practice by the inclusion in its petition for injunction of the following allegation:

---

(1) For a New York Supreme Court, appellate division, case holding that the decision in **Goodwins v. Hagedorn** has not been impaired by the subsequent rulings of the Supreme Court of the United States see **Baylis v. Quinnonez**, 145 N. Y. Supp. (2d) 232 (October 24, 1955).

> "Petitioner shows that the picketing presently engaged in by the defendant union has for its unlawful purpose the forcing of petitioner to interfere with the rights of its employees as expressed by the legislature of Louisiana, by requiring petitioner to deal with the defendant union as a representative of its employees in the absence of their selection of said union as their representative." (R. 4).

Petitioners do not say what sub-section of Section 8 (b) of the Act is alleged to have been violated, and nowhere in the petition for injunction is there an averment or conclusion that any violation of any sub-section of Section 8 (b) has occurred. This is a far cry from the *Weber* case where the complaint contained the specific allegations ". . . .that the strike constituted a 'secondary boycott under the common law of the State of Missouri,' and was also a violation of sub-sections (A), (B) and (D) of Section 8 (b) (4) of the Taft-Hartley Act and of Section 303 (a) (1), (2) and (4) of the same act." Nor is the language of paragraph 10, quoted above, susceptible of a construction that would spell out an unfair labor practice.

Petitioners, at page 28 of their brief, have sought to draw a parallel between the conduct complained of in *Garner* and the quoted allegation. No such parallel is possible. The Supreme Court of Pennsylvania in its opinion (373 Pa. 19, 94 A. (2d) 833) found that the picketing in *Garner* was in violation of Section 8 (b) (2) in that it was designed to "attempt to cause or cause an employer to discriminate against an employee in violation of sub-Section 8 (a) (3) of this Section . . .", and pointed

out that Section 8 (a) (3) prohibited discrimination in regard to hire or tenure of employment because of union membership or lack of it. Thus *Garner* involved a case where the union was attempting to get an employer to have his employees join the union or fire them. Nothing like this is alleged here. The allegation is that the union is attempting, by picketing, to obtain certification without having been properly designated as majority representative. There is no allegation of coercion of employees, and no allegation that the union attempted to cause the employer to discriminate.

It might be urged that the allegation in the quoted paragraph described an attempt upon the part of the union to cause the employer to violate Section 8 (a) (1) of the Act. Even if acquiescence with the union's demands would have amounted to a violation of Section 8 (a) (1) by the employer, **it is not made an unfair labor practice for a union to cause an employer to violate Section 8 (a) (1) of the Act.** *Miami Copper Company*, 92 NLRB 322 (1950).

There remains for consideration, therefore, whether Section 8 (B) (1) (A) of the Act makes unlawful peaceful picketing for recognition.

In *National Maritime Union of America*, 78 NRLB 971 (1948), the Board, beginning at page 982 of its opinion, engaged in an exhaustive review of the legislative history of Section 8 (b) (1) (A) of the Act. The Board commented:

> "The words 'to interfere with' were deleted from the amendment with the consent of Senators Ball and

> Taft, after Senator Ives had expressed the fear that these words 'could easily be construed to mean that any conversation, any persuasion, any urging on the part of any person, in an effort to persuade another to join a labor organization, would constitute an unfair labor practice."

The Board concluded that Section 8 (b) (1) (A) was aimed at the means by which a strike was conducted (Board opinion, page 986). And in the *Matter of Perry Norvell Company*, 80 NLRB 225 (1948), the Board, citing its *National Maritime* case, stated:

> "Assuming, arguendo, the validity of the premises upon which the General Counsel has based his argument, the conclusion does not follow that the strike violated the Act.[24] Section 8 (b) (1) (A) was not intended to have the broad and almost limitless reach which the General Counsel urges upon the Board. The legislative history of the Act shows that, by this particular section, Congress primarily intended to proscribe the **coercive conduct** which sometimes accompanies a strike, but not the strike itself.[25] By Section 8 (b) (1) (A), Congress sought to fix the rules of the game, to insure that strikes and other organizational activities of employees were conducted peaceably by persuasion and propaganda and not by physical force, or threats of force, or of economic reprisal.[26] In that Section, Congress was aiming at means, not at ends."

The Fourteenth Annual Report of the National Labor Relations Board for the year 1949 contains at page 83, this statement:

> "In several cases it was urged by the General Counsel that calling certain types of strikes allegedly prohibited under other subsections of Section 8 (b), or the threat to do so, also constituted proscribed union activity within the meaning of subsection (1) (A). The Board rejected this contention, on the ground that this portion of Section 8 (b) was designed only to curtail acts of coercion and violence that sometimes may accompany a strike, but not the very strike call itself."[22]

And in *Local 74, United Brotherhood of Carpenters and Joiners*, 80 NLRB 533, 539 (1948) the Board held that a union "did not violate Section 8 (b) (1) (A) of the Act, (1) by peacefully picketing Watson's own store at a time when Local 74 represented none of its employees. . . ." Thus, even stranger picketing does not, in view of the Board, violate the Act it administers.

Nor, in the view of the Board, would the circumstance that acquiescence to the union's demands might cause an employer to commit an unfair labor practice make the union's conduct illegal under the Act. In *Miami Copper Company, supra*, a case dealing with picketing by a non-certified union the Board said:

> "Standing alone, the fact that the Union's conduct caused the Employer to violate a statutory right of the employees is not sufficient, in our opinion, to bring that conduct within the limitations which the legislative history requires we place on Section 8 (b) (1) (A)."

The Board has also treated with recognition picketing conducted by a non-complying union in connection

with alleged violations of Section 8 (b) of the Act. In *Rubin Bros. Footwear, Inc.*, 99 NLRB 610, 619 (1952), the question as to whether a strike for bargaining rights by a non-complying union violated the Act was raised as defense in a refusal to bargain case brought by a union against the employer. The Board, in passing on the question raised in this matter, adopted the following language of the Trial Examiner's intermediate report:

> "Respondents seem to contend, in the instant matter, that the strike was illegal and void and consequently an unprotected activity by its employees since it was called because of Respondents' failure to recognize the United Shoe Workers of America, C. I. O., and was called at a time when said Union was not in compliance with Section 9 (h) of the Act. The undersigned finds no authority to support this contention. The undersigned has found no authority holding a strike under these circumstances is per se unlawful. Furthermore, in the light of the entire Act and its legislative history it does not appear that Congress intended such an interpretation of the statute even though the Union could not use the processes of this Board to enforce its demands prior to its compliance with Section 9 (h) of the Act."

The Board, and its General Counsel, have made it abundantly clear that no relief whatsoever can be obtained through Board processes from the crippling effects of a primary recognition strike, even though the strike activity be unprotected by the provisions of the Act. The most recent administrative decision in this regard is quoted below:

"Par. 53,365 Administrative Decision of the General Counsel, Case No. K-101, November 3, 1955,

Unfair Practice Charge—Strike for Immediate Election.

"While a union petition for a representative election was pending, union requested the company to agree to an immediate election. When the company rejected this proposal, the union struck the plant and set up a peaceful picket line. The company filed a charge, alleging a violation of Section 8 (b) (1) (A) of the Act.

"The General Counsel concluded that further proceedings under Section 8 (b) (1) (A) were unwarranted. Whether or not the conduct of the union constituted activity protected under Section 7 (see, e. g., Hoover Co. v. N. L. R. B., 191 F. (2d) 380 (C. A., 6) and N. L. R. B. v. Electronics Equipment Co., 194 F. (2d) 650 (C. A., 2)), the strike and picketing herein did not violate Section 8 (b) (1) (A). (See Perr Norvell Co., 80 NLRB 235, 238-241, where the Board held that Section 8 (b) (1) (A) proscribes 'the coercive conduct which sometimes accompanies a strike, but not the strike itself.' Also, see Miami Copper, 92 NLRB 322, 324; Watson Specialty Store, 80 NLRB 533, 539; and UAW v. O'Brien, 339 U. S. 454, 458. Also, see Senate Report No. 986, Part 3, 80th Congress, Second Session, pp. 70-72, wherein the Joint Committee on Labor-Management Relations, in commenting on the 1947 amendments to the Act, observed, in part, that 'the right to strike for recog-

nition is only foreclosed when another labor organization has been certified as the bargaining representative.)"

A good summary of the position of the Board and the General Counsel in this regard is found in an address given by the former General Counsel of the National Labor Relations Board before the Arkansas Bar Association on May 13, 1954:

"Another interesting and difficult question arises in connection with organizational or recognition strikes in circumstances where the union is not the clear representative of the majority of the employees. Thus, for example, assume that two unions are vying for recognition as the exclusive bargaining representative of a given group of production and maintenance employees. Both conduct vigorous campaigns to win majority support among the employees; each has substantial support among the employees as evidenced by the signatures of employees to union cards; indeed, there are overlapping cards, some employees signing cards for one union one day and for another union the next day. In this not unusual situation the Board has held the employer is duty bound to withhold recognition from either union until the employees have made a choice in an election conducted by the Board. Suppose, however, that one of the two unions strikes for immediate recognition. It has been held that such a strike is not a protected activity; it is designed to compel the employer to grant what it is his duty to withhold and thus to implicate him in a

wrong. Hoover Co. v. N. L. R. B., 191 F. (2d) 380 (6th Cir., 1951); N. L. R. B. v. Electronics Equipment Co., 194 F. (2d) 650 (2nd Cir., 1952). But neither, as I see it, is the strike prohibited by the National Labor Relations Act as an unfair labor practice. Bogalusa Motors, Inc., Case No. 15-CB-117, Administrative Appeal denied Feb. 19, 1954. **Congress has seen fit to make only one form of direct recognition strike unlawful as an unfair labor practice, namely, a strike for recognition by one union in the face of the Board's certification of another union as the exclusive bargaining representative.** And this is not an area, in my view, in which as administrators we are free to innovate. Many proposals have been advanced in Congress to prohibit other forms of recognition strikes; much discussion pro and con has taken place, but Congress has not yet seen fit to act. We cannot rush in, it seems to me, where Congress has been so conspicuously reluctant to tread. 34 Lab. Rel. Rep. 67 (1954)." (Emphasis supplied).

It is submitted, therefore, that under no section of the National Labor Relations Act is the conduct here involved made a union unfair labor practice. But, in the words of the Labor Board, "to say that a strike is not violative of Section 8 (b) (1) (A) is not necessarily to say that it constitutes a concerted activity protected by Section 7." *National Maritime Union of America, supra,* at page 987 of the opinion.

3. Picketing By A Non-Complying Union For Exclusive Recognition Is Not Protected by the Act.

The petitioning union is a labor organization which, as a matter of policy, has purposely refused to have its officers file non-communist affidavits, and to give proof of financial disclosures to its members, as required by the Act. This is no case of an inadvertent or temporary failure to comply. To the contrary the petitioning union, in requesting a writ of review, openly and avowedly seeks the Court's approval for the continuation of what it calls its "self-help" method of organization. To put it another way, the petitioning union desires to be free to compel recognition by the effect of the picket line, rather than to have recognition awarded to it after orderly election processes in accordance with law.

The petitioner, United Mine Workers, flatly takes the position that the Labor Management Relations Act grants or "protects" a non-complying union's right to strike and picket an employer for recognition. Respondent as strongly denies that the Act grants any such right. Our reasoning is that to grant such protection to a non-complying union would be to place a premium upon its non-compliance, which certainly was never intended by Congress.

Section 9 (g) of the Act provides:

> "(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file

> with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). * * *"

This is a flat, unequivocal directive to all labor unions representing employees engaged in interstate commerce. Petitioner does not deny this, because it is expressly so provided in the Act, but it says that it does not have to comply because the only penalty provided by Congress is to deny a non-complying union the processes of the board in representation and unfair labor practice matters. It is our thought that Congress failed to provide a harsher penalty for non-compliance simply because it was convinced that the named penalty would do the job and bring all unions to comply. It has had this effect in the great majority of cases, but, strange to say, the petitioning union has adopted a definite and studied policy of circumventing the Board and, in effect, taking the law into its own hands.

The National Labor Relations Act, as amended, affords protection to unions engaged in peaceful strikes and picketing for recognition, but, as we read the Act, only to those unions which make themselves amenable to its processes (Section 9 (f) (g) and (h)). Thus, the petitioning union has made it impossible for the National Labor Relations Board either to certify it as a majority representative of its employees, or to order an employer to bargain with it either with or without certification. Petitioner has no remedy with the Board, the body charged with affording to unions the Act's protection. By adhering to a policy of non-compliance the petitioning union, it is submitted, has waived any right to the Act's protection.

Petitioners, at page 14 of their brief, urge that:

> "No limitation upon the right of a union to represent employees arises from a failure to file in accordance with the provisions of Section 9 (f) (g) and (h)."

While it is true that the Act does not make voluntary recognition of a non-complying union unlawful, it does place such a union in a position so as not to be able to compel recognition, and in certain important particulars, contrary to the statements of petitioners, has placed restrictions upon such a voluntary bargaining relationship.

The proviso to Section 8 (a) (3) [29 U. S. C.; 158 (a) (3)] permits the execution of a contract with a labor organization, requiring membership in the union after a 30 day waiting period. This permission is subject to these qualifications:

> "Section 158 . . . (3) . . . (i) if such labor organization is the representative of the employees as provided in Section 159 (a) of this title, in the appropriate. collective-bargaining unit covered by such agreement, when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 159 (f), (g), (h) of this title, and (ii) unless following an election held as provided in section 159 (e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: . . ."

Thus a non-complying union is subject to one of the most severe restrictions which the law could place upon a labor organization. One need only to read the newspapers, in their reports of activities in connection with state right-to-work laws, to learn how important union security is to organized labor. Obviously this limitation upon the freedom to contract is more onerous to the union party to the agreement than to the employer. But it is no answer to say that only unions desire, and can benefit by union security agreements. There is no unanimity of opinion among employers as to bans upon union security. Many employers, particularly in the construction and maritime industries, have given evidence of a preference for tight union security. Can it be said that an Act which so severely curtails a non-complying union in its efforts to bargain collectively, affords protection to its picketing to compel entrance into such a limited bargaining relationship? Did Congress intend that an employer, who might desire the stability of labor relations that a union security agreement gives should, without any redress, either contract with such a restricted organization, or stand the crippling effects of a picket line?

And there is another limitation or restriction to which any voluntary bargaining relationship between a non-complying union and an employer is subject. Even though there be no dispute between an employer and a complying labor organization as to the appropriateness of the bargaining unit or as to majority status of the union either the union or the employer may set in motion the machinery of the Board and have the union status as majority representative of the employees ratified by the

Board by the issuance of a certification. This is an extremely important matter. The Act provides:

> "Section 158 . . . (b) it shall be an unfair labor practice for a labor organization or its agents . . . (4) to engage in . . . a strike . . . where an object thereof is . . . (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title."

It is thus plain that only by contracting with a certified organization may an employer be free from labor disturbances resulting from claims of rival unions. It is not enough to say that under the Board's contract bar rules an election cannot be forced during the term of a contract of reasonable duration. Unless the contracting union is also the certified union any other union may strike or picket for recognition without committing any unfair labor practice under the federal Act. In the first case arising since the 1947 amendments, in which the Board proceeded to certification where the union was already recognized was *General Box Company*, 82 NLRB 678 (1949). The Board engaged in a very complete discussion of the problem:

> "These statutory privileges and immunities that accompany certification are not the only significant advantages that accrue to certified unions, as distinguished from those that enjoy recognition without certification. Under the so-called 'one-year rule' enunciated by the Board long before the

1947 amendments were enacted, a certified union's right to recognition as the exclusive bargaining agent is stabilized and fully protected for a 'reasonable' period of time, ordinarily one year from the date of certification. This rule operates to limit the freedom of the employees to select and change their bargaining representative at will, once they have selected a union in a secret ballot conducted by the Board;[10] it derives from the statutory policy of encouraging and stabilizing collective bargaining in the interest of industrial peace;[11] it endows a **certified** union's status with a measure of security and permanence not enjoyed by a union whose majority standing and right to recognition is established otherwise than by Board election and certification.

'For example, although an uncertified union may prove its majority to the employer's satisfaction, properly secure recognition and negotiate with the employer for many months, the successful completion of this collective bargaining effort may be frustrated. If, at the eleventh hour before a contract is signed, a rival union, or employees seeking to 'decertify'[12] the merely recognized union, assert that its majority is dissipated and file a petition with the Board, the employer may not lawfully execute a contract until the Board has disposed of the petition.[13] But if the union has a vital **certification,** neither the employer himself nor a rival union, nor the employees, can effectively raise a question of representation;[14] and if a contract otherwise valid is signed or renewed within the cer-

tification year, even in the face of a petition, it will bar an election for its term.[15] In short, under the 'one-year rule,' a Board certification not only resolves any dispute as to the employer's duty to recognize and bargain with the certified union; it also precludes other possibly interested parties from raising a question of representation, and for a definite period of time.

"In enacting the 1947 amendments, Congress left unchanged the Board's practice of according this special value to certifications. Moreover, it greatly expanded and implemented the protection of certified unions in Section 8 (b) (4), and restated the statutory policy of stabilizing collective bargaining relationships in the public interest. It would be a retrogressive step tending to defeat that basic policy to hold that an employer's willingness to recognize and bargain with a union makes it impossible for the union to secure the other manifest advantages which flow from a Board certification. **In many instances, indeed, it is the employer—although concededly not this one—who seeks these advantages and particularly those conferred by Section 8 (b) (4) (c).**

"For these reasons, as well as those more fully stated in the Advance Pattern case, we conclude that, in view of the 1947 amendments, an employer's recognition of a union which asserts representative status does not, in and of itself, negate the existence of a question concerning representation. In this case, we are of the opinion that there is such a question, created by the Pe-

titioner's assertion of majority standing, its expressed desire to secure a certificate, and its formal petition that the Board investigate its status by the statutory method of conducting an election.[16]

"The concurring opinions of our colleagues propose that the Board certify the Petitioner here without an election, apparently after some other type of investigation of its majority status. **Aside from the fact that such a procedure might well stimulate collusion and raise more problems than it would solve, we must point out that the 1947 amendments deprived the Board of the power to certify without an election."** (Emphasis supplied).

In *Lock Joint Pipe Company*, 106 NLRB 355 (1953), the Board recently had occasion to direct an election, upon the petition of an employer, where the union was already recognized but the employer felt the need of having stabilized labor relations with a certified union.

There is an inconsistency that runs through petitioners' entire position. It asserts it was a majority designated union and further asserts that respondent was under a duty to bargain with it in absence of any certification by the National Labor Relations Board. What respondent overlooks is that only the National Labor Relations Board can determine whether petitioners were the majority designated union, or where there was any duty upon the part of respondent to bargain with the union. Whether the Board determines the duty to bargain by its election processes, or whether it determines this duty to bargain in a complaint proceeding brought under Section

10 (b) of the Act only the Board can, under the law, initially decide whether a majority existed or whether respondent had a duty to bargain. **Petitioners by adopting non-compliance as a matter of policy have made it impossible for the Board to determine majority, in any fashion, or to determine the duty to bargain.** The Louisiana Supreme Court discussed this: "Shortly after the passage of the 1947 amendment to the Act, in the matter of *Herman Loewenstein, Inc.*, 75 NLRB 377, the National Labor Relations Board had occasion to consider and interpret the provisions of Section 9 (f) (g) and (h) and it there laid down a policy from which it has never since deviated. Although in that case the matter had been brought to the Board by the employer, the Board, in refusing to take jurisdiction, said:

> *'We construe the amended Act to provide, in essence, that a non-complying labor organization shall not be the beneficiary of any Board investigation of a question concerning representation.* For this reason the Board has declined to proceed to hearing or election on a petition filed by a non-complying union; it has declined to certify such a union since the effective date of the amendments to the Act, even though it won a victory at the polls before that date; it has declined to place such a union on the ballot, as intervenor, in an election held at the instance of a petitioning labor organization that has complied with Sections 9 (f) and (h), even though its intervention at the hearing was otherwise proper; and *it has declined to order an employer to bargain collectively with a noncomplying union*, except upon compliance by the union within a specified period.

'Here the petitioner is not a complying labor organization, but the employer. The fact remains that the question concerning representation, although brought to the Board's attention by the employer's own petition, was 'raised by a labor organization.' It was raised by the affirmative claim, here made both by the Fur Workers, CIO and by the Adirondack Workers, that a labor organization represented a majority of the employer's employees within an appropriate unit. * * * *Although it is the employer's petition in such a case that sets the Board's machinery in motion, it is an individual's or a labor organization's initial claim for recognition that makes it possible for the employer to invoke that machinery.* If, as here, a labor organization that presented a claim for recognition has not complied with the provisions of Section 9 (f) and (h), we would no more implement the policy of Congress if we placed it on the ballot than if we were to do so in a case in which it, or another labor organization, filed the formal papers with the Board. *If a non-complying union were placed on the ballot and happened to win the election, no one could expect the Board under the amended Act to issue a certification that would run in its favor.* But a victory at the polls, even without later formal certification, would confer certain moral and practical advantages on the non-complying union which the basic policy of Congress appears to discountenance. Such a result can be averted with certainty only by our declining to place a non-complying union on any ballot,

PROOF OF SERVICE.

I hereby certify that I have deposited in the United States Mail, with sufficient air mail postage thereon insured delivery, copies of the foregoing brief and argument addressed to all counsel for United Mine Workers of America, et al., petitioners, one copy being addressed to Honorable Crampton Harris, 1018-19 First National Bank Building, Birmingham 3, Alabama; one copy to Honorable James I. McCain, 818 Whitney Building, New Orleans, Louisiana; one copy to Honorable Yelverton Cowherd, 900 Fifteenth Street, N. W., Washington 5, D. C.; and one copy to Honorable Alfred D. Treherne, 900 Fifteenth Street, N. W., Washington 5, D. C., on this ..... day of January, 1956.

I further certify that I have placed in the United States Mail, three copies of the foregoing brief and argument, addressed to the Solicitor General, Department of Justice, Washington 25, D. C., with postage thereon fully prepaid to insure delivery, on this ..... day of January, 1956.

JOHN L. PITTS.

unless there are absolutely compelling statutory or policy reasons for doing so.

In our opinion, *the fact that a petition has been filed by an employer rather than by a labor organization does not provide such compelling reasons.* The question concerning representation remains a question 'raised by a labor organization' which has made a claim for recognition as bargaining representative. An employer petition, like a union petition, seeks to resolve the question of who, if anyone, is the true bargaining representative of the employees. Either sets in motion the same investigative process; the same result, either of certification or of dismissal, may flow from either; and a Board election conducted on the basis of either will now preclude another Board election for 12 months. This similarity between employer and union petitions, both in purpose and in result, points strongly to the conclusion that a non-complying union should derive no more advantage from the one than it does from the other. The statutory language supports the same conclusion. Sections 9 (f) and (h) speaks in terms of questions raised, rather than of petitions filed, by labor organizations. An employer petition must allege that he has been presented with a claim by an individual or a labor organization for recognition as bargaining representative of his employees. The distinction which Congress intended to draw by the words 'raised by a labor organization' is, we believe, between a claim for recognition made by a union and a similar claim by an individual or in-

dividuals, not between a union petition and an employer petition filed with the Board. * * *

"* * * *We believe* * * * *that the exclusion of non-complying unions from the ballot in cases where employers are the petitioners is more nearly consistent with the supervening policy of denying the imprimatur of Government to such labor organization.*' To this same effect are the later decisions in Staten Island Cleaners, Inc., 93 NLRB 63; and the Federal Refractories Corp., 100 NLRB 35. (All emphasis has been supplied)." (R. 77-79).

In any determination as to whether the federal Act has excluded state action it is pertinent to inquire into the remedies afforded by the federal Act. *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656, 98 L. Ed. 1025, 74 S. Ct. 833. **A union which refuses to comply with the filing requirements of the Act may not compel recognition.** This much is clear. Petitioners themselves agree that they cannot utilize the services of the Board, but must resort to "self-help", *i. e.*, the picket line. It is submitted that, insofar as bargaining rights arising out of the demand for recognition in this case are concerned, this union has forever removed itself from the protection of the Act. This is true even should the union, at this late date, have a change of heart and comply with the will of Congress by meeting the requirements of Section 9 (f) (g) and (h). An employer faced with the demand for recognition may insist upon a Board election and Board certification prior to recognition of the union so long as his insistence upon a Board election certification are not in

bad faith—and objective tests are used in the determination of bad faith, that is, the commission of unfair labor practices. **We are aware of no case where the employer was found guilty of a refusal to bargain because of his insistence upon Board certification, and since the amendments to the Act, upon an election, where the Board did not also find unfair labor practices, independent of the refusal to bargain, as evidence of the employer's bad faith.** The most recent expression of the Board is found in *Sunset Lumber Products*, 113 NLRB No. 115 (1955), 36 LRRM 1426, where it was said:

> "The Trial Examiner, viewing the foregoing facts, concluded that the Respondent's refusal to recognize the Union and discuss the provisions of a collective bargaining agreement or arrange to meet for such a purpose was not motivated by a good faith doubt as to the Union's majority status. We cannot agree with the Trial Examiner that the Respondent unlawfully refused to bargain with the Union. As the Board has previously stated, ordinarily an employer faced with the demand for recognition by a labor organization which claims to represent a majority of his employees may refuse to rely upon evidence of the union's representation and insist that the union establish its majority by means of a Board conducted secret election.[5] But when, as stated in the Joy Silk Mills case,[6] 'such refusal is due to a desire to gain time and to take action to dissipate the union's majority, the refusal is no longer justifiable and constitutes a violation of the duty to bargain set forth in Section 8 (a) (5) of the Act.' Whether an employer's

refusal to bargain is impelled by a good or bad faith doubt as to the union's majority status can only be tested by reference to the total picture of the employer's conduct revealed by the record as a whole.

"When the General Counsel introduced evidence that the Union represented a majority of the employees in an appropriate unit, that it requested recognition, and that this request was declined, and the Respondent came forth, as it did, with evidence establishing that its refusal to grant recognition was founded on its desire that the Union first establish its majority before this Board, the ultimate burden of proving that the refusal was motivated by bad faith remained for the General Counsel to sustain. The burden of proving its bona fides did not shift to the Respondent. This burden could be met by the General Counsel through the introduction of evidence that 'all the circumstances of (this) case, including the (Respondent's) background, the 'character or extent' of the unfair labor practices, and the sequence of events' demonstrated the Respondent's bad faith motivation in refusing to bargain with the Union. However, on the state of the record before us, we are not persuaded that that burden has been successfully borne. * * *"

And in *A. L. Gilbert Company*, 110 NLRB 2067, 35 LRRM 1314 (1954), the Board made it clear that an employer, who had no doubt that his employees had actually signed an authorization designating the union as a representative, might still insist upon an election so that his em-

ployees might express their views in secret, so long as he committed no serious unfair labor practices in connection with his insistence upon an election.

In holding to this view the Board is following the decisions of the Courts of Appeal. In *National Labor Relations Board v. Jackson Press, Inc.*, 201 F. (2d) 541, 544, (7th Cir., 1953), the Court summarized the state of the law at that time:

> "When an employer is faced with a demand for recognition by a union, it may in good faith withhold recognition until the union's representation claims are established by a Board conducted election. N. L. R. B. v. Chicago Apparatus Co., 7 Cir., 116 F. (2d) 753, 758; North Electric Mfg. Co. v. N. L. R. B., 6 Cir., 123 F. (2d) 887, 889; Joy Silk Mills, Inc., v. N. L. R. B., 87 U. S. App., D. C. 360, 185 F. (2d) 732. However, such refusal of, or delay in, recognition may not be for the purpose of gaining time in which to undermine the union or to dissipate its claimed majority. N. L. R. B. v. Federbusch Co., Inc., 2 Cir., 121 F. (2d) 954. A refusal to bargain inspired by such a purpose is not in good faith and is a violation of Sec. 8 (a) (5) of the Act."

In *Ohio Ferro-Alloys Corp. v. National Labor Relations Board*, 213 F. (2d) 646, (6th Cir., 1954), the Court, in recognizing that the strike of the non-complying United Mine Workers was an unprotected activity, pointed out, under the circumstances of that case, that the company was under no duty to recognize the union prior to a Board determination of majority status. The Circuit

of such employees whom such employer is required to recognize under this Act;

(5) to require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; and

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed. 61 Stat. 140, 65 Stat. 601, 29 U.S.C., Section 158 (b).

Section 9 (c):

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

Court cases cited by petitioner from page 24 through page 27 hold that where an employer's insistence upon a certification is not *bona fide*, as shown by its unfair labor practices, then a duty to bargain exists. These cases are not at variance with the cases cited above. In each of them the company provided evidence of its rejection of the principle of collective bargaining by the commission of unfair labor practices. In the instant case there is no suggestion that the employer committed any act denounced by the National Labor Relations Act as an unfair labor practice, or that it refused to recognize petitioners for any other reason than that petitioners were not in compliance and had not been properly certified and accredited by the National Labor Relations Board. The union representative, James L. Ledbetter, testified that he made a demand upon respondent's representative, Mr. Fowler, and "he told me that we wasn't recognized by the National Labor Relations Board and that he didn't recognize us either". (R. 53). Fowler confirms this. (R. 58). Unquestionably, as found by the Court below, both Fowler and Ledbetter were referring to the well known fact that the United Mine Workers had publicly refused to comply with the filing requirements of the Act.

Initially the Board held that there was no obligation whatsoever, regardless of motive, for an employer to comply with the request to bargain made by a non-complying union, and such an employer could not be found guilty of refusal to bargain with such an organization regardless of whether the refusal was made in good or bad faith. *Matter of Andrews Company*, 87 NLRB 379 (1949). However, this decision met with the disapproval of the Court of Appeal for the District of Columbia in

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10 (c).

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees on strike who are not entitled to reinstatement shall not be eligible to vote. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

West Texas Utilities Company v. N. L. R. B., 184 F. (2d) 233 (C. A., D. C., 1950). The Board modified its practice in accordance with this decision and announced the change in the *Matter of New Jersey Carpet Mills, Inc.*, 92 NLRB 604 (1950). Under the Board's present rule an employer may, regardless of any other motives he may have, defer recognition of a non-complying union until such time as it complies, **so long as the employer gives non-compliance as one of the reasons for the failure to accord recognition.** The Board's conclusions in this regard have been summarized at page 612 of the *New Jersey Carpet Mills, Inc.* opinion:

> "We therefore disagree with our colleagues' view that the fact of actual compliance at the time of the employer's refusal to bargain should be the criterion by which the existence of a violation should be tested. Where, as here, the Employer's own action in refusing to bargain was based when it occurred entirely on other grounds, themselves, unlawful, the unasserted and purely coincidental fact of the Union's non-compliance cannot entitle the Employer to a windfall or immunize it against the Board's finding a violation of the Act, once the Union's later compliance frees us to inquire. In such cases a union's non-compliance is an afterthought, which could not have motivated the employer's original refusal and does not bear upon its good faith at that time.
>
> "However, in the interest of effectuating the policies of the Act, **Chairman Herzog** would not go to the other extreme and hold that every refusal to bargain with a non-complying union is a violation,

even though the court's opinion in the West Texas Utilities case suggests that the Board might freely do so.[20] Where an employer contemporaneously notifies a labor organization that the latter's non-compliance is the reason for its refusal to negotiate, and the facts disclose that the union was indeed not in compliance at the time, the Chairman believes that congressional policy of encouraging compliance should require this Board to view the situation in a different light and find no violation. For then, in his opinion, realism should oblige the Board to recognize not only that the employer's position may well be consistent with a good-faith recognition of the basic principle of collective bargaining, but that its very assertion will tend to encourage early union compliance with Section 9 (f), (g), and (h). As was said in the dissenting opinion in the Andrews case, which goes as far as Chairman Herzog still believes the Board should go, this would result in practice in employers' 'calling their employees' attention to the non-compliance status of their representative. It would furnish an incentive to employees to require their representatives to comply, because by so doing they could achieve immediate recognition and bargaining, if necessary with the assistance of Board processes which they could then invoke."

Certainly the Board's rule and decision would serve to effectuate the object of Congress of bringing all unions into compliance with the provisions of Sections 9 (f) (g) and (h) of the Act, while the view urged by petitioners

here would serve to encourage rather than discourage compliance with those provisions.

The Circuit Courts have not disapproved of the Board's present position. In *National Labor Relations Board v. Reed & Prince Mfg. Co.*, 205 F. (2d) 131, cited at page 18 of petitioners' brief, the **Board** sought, in the Circuit Court of Appeals, to enforce its bargaining order against respondent company. The company sought to defend on the grounds that the union had not been in compliance at the time the bargaining request was made. In sustaining the Board's rejection of this defense the Court noted at page 133:

> "* * * it not infrequently happens that a union completely above suspicion of communist domination may fall temporarily out of compliance * * *"
> "* * * This objection was not taken at any time during the period of protracted negotiations between the company and the union; * * *"

And in a similar case, *NLRB v. Pecheur Lozenge Co., Inc.*, 209 F. (2d) 393, 402 (2nd Cir., 1953), cited at page 19 of petitioners' brief, the Court with Judge Medina as the organ of the Court said:

> "The refusal was based on grounds which were insufficient in the eyes of the law and **was not premised upon the Union's failure to comply with the requirements of that section** (the filing requirements). As we have seen, as late as November 28, 1949, Mrs. Pecheur told Balleisen that neither the Union's non-compliance with the filing requirements of the Act nor its 'pro-communistic' charac-

> ter 'would make (any) difference to her,' and that if the employees wanted the Union she was willing to bargain with it. **In these circumstances,** while failure to file the non-communist affidavits required by Section 9 (h), and the financial statement and other reports required by Section 9 (f) and (g), bars a union from access to the processes of the Board, it does not necessarily destroy the Union's status as bargaining representative for purposes of Section 8 (a) (5) * * *" (Emphasis supplied).

These cases, in which non-compliance at the time of the bargaining request was raised as an afterthought, are certainly not authority for the proposition that an employer, who refuses to bargain with a union **which as a matter of policy has refused to comply, for that reason,** is under any obligation to bargain with that union. To the contrary, the explicitness with which the Courts pointed out that the defense was an afterthought, and the union's non-compliance was only temporary, indicates that the Courts would have reached a different result had the union, at the time of the request, been pursuing non-compliance as a matter of policy.

The Supreme Court of Wisconsin, in *Faribault Daily News Incorporated v. International Typographical Union*, 230 Minn. 303, 53 N. W. (2d) 336, took, it is submitted, too limited a view of a state's right to proceed in a matter of this kind. Further, the Court's reasoning that the filing requirements were but a bar to certification, and, since certification was not a prerequisite to a recognition strike, did not take into account the com-

plexities of the problem which have been here detailed. The Court relied solely upon a decision which had been issued some seven years prior to the amendments requiring the non-communist affidavits and other filings.

It is respondent's position that regardless of whether **employees** who go on strike in support of a non-complying union's claim for recognition are protected from discharge and other retaliatory action by an employer, **the union,** for reasons hereinafter to be advanced, should not be given the protection of the Act. The Board's position as expressed in *Brookville Glove Company,* 114 NLRB No. 52, cited at page 30 of petitioners' brief should be examined in the light of *Hoover Co. v. N. L. R. B.,* 191 F. (2d) 380 (6th Cir., 1951); *N. L. R. B. v. Electronics Equipment Co.,* 194 F. (2d) 650 (2nd Cir., 1952); and *Ohio Ferro-Alloys Corp. v. National Labor Relations Board, supra.* These cases all hold that employees who go on strike in support of a recognition demand on the part of a non-complying union while a representation proceeding on behalf of another union is pending lose all protection of the Act. Should not the same rule apply where only one union is involved, but it has made proper determination of the question concerning representation impossible by refusing to submit itself to the Board's processes? In the one case the strike is outlawed because it must await the outcome of a representation proceeding brought by a complying union. In our case the strike should be outlawed because a proper determination of the question concerning representation cannot be made because of the non-compliance of the claiming union, although the Act contemplates that the employer may, in

good faith, either require Board certification, or invoke the Board's processes itself.[2]

However, it is not necessary to hold that employees who strike in support of a non-complying union's demand for recognition lose protection of the Act to hold that the union itself is not similarly protected. Any individual may be assured of the Act's protection by filing charges with the Board in his individual capacity. *N. L. R. B. v. Southern Furniture Mfg. Co.*, 194 F. (2d) 59 (5th Cir., 1952), Cert. denied, 343 U. S. 964, 96 L. Ed. 1361, 72 S. Ct. 1057; *N. L. R. B. v. Augusta Chemical Company*, 187 F. (2d) 63 (5th Cir., 1951); *N. L. R. B. v. Clausen*, 188 F. (2d) 439, (3rd Cir., 1951); *Brookville Glove Company, supra.* The Courts and the Board have denied relief under the Act where proceedings, though purportedly filed on an individual basis, were actually filed by an individual fronting for a non-complying labor organization. This demonstrates that the statutory scheme is designed to prevent any benefits of the Act flowing to the union as such. *N. L. R. B. v. Happ Bros., Inc.*, 196 F. (2d) 195 (5th Cir., 1952); *N. L. R. B. v. Alside*, 192 F. (2d) 678 (5th Cir., 1951); *White v. Douds*, 80 F. Supp. 402 (D. C., S. D. N. Y., 1948); *Timm Industries, Inc.*, 104 NLRB 359 (1953); *Woods Parts, Inc.*, 101 NLRB 445 (1952). Finally, it is submitted that the Court's decision in *N. L. R. B. v. Dant & Russell*, 344 U. S. 375, 382, 73 S. Ct. 375, 97 L. Ed. 407, 413 (1953) effectively disposes of any ar-

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[2] If proper recognition is accorded to the intent of Congress in adding to the rights protected by Section 7 the right to refrain from concerted activities, then a question of representation raised by one union must be placed in the same class as one raised by two unions. Instead of competition between groups of employees, each supporting a different union, there is competition between employees supporting a union, and those who wish to refrain from such support.

gument that a non-complying union, as such, is entitled to any protection whatsoever from the provisions of the National Labor Relations Act. There the Court said:

> "Phrased differently, the argument is that the benefits of the Act may not flow to a labor organization unless the non-Communist affidavits are on file. We agree with the argument, and believe that it is in accord with our interpretation of § 9 (h)."

The union here involved, as its petition for certiorari discloses, is committed to a policy of non-compliance, and complains principally that the decision below amounts to "a death sentence". (Petition for certiorari, page 17). In short, petitioner seeks protection of the Act, but is unwilling to comply with its provisions. If this be a "death sentence", then it is certainly self-inflicted, and could be avoided by simple compliance with law.

If a state has not the right to protect its employer citizens from irreparable injury caused by a recognition picket line thrown up by a union which refuses to permit lawful and orderly determination of the question of representation, then the employer is placed in a hopeless dilemma. Under ordinary circumstances, *i. e.*, when confronted by a recognition demand and bargaining request by a union in compliance with the Act, an employer may demand that the union seek certification under 29 U. S. C., 159 (c), or himself seek an election under that Section. So long as the employer's demand for an election is not made for the purpose of seeking delay in order to undermine the union his right to an election is held by the Board, with Court approval, to be absolute. Even should

it later develop that the union at the time it made its request was, in fact, the majority representative on the basis of signed cards there will be no finding of refusal to bargain where there is no demonstration of bad faith in seeking an election. *Sunset Lumber Products, supra; A. L. Gilbert Company, supra; National Labor Relations Board v. Jackson Press, Inc., supra.*

Thus a complying union can be forced to an election. *Matter of Herman Loewenstein, Inc.*, 75 N. L. R. B. 377. The petitioning union here, a non-complying union, seeks to be placed in a better position than a complying union. Surely Congress did not intend such a situation.

CONCLUSION.

Wherefore, respondent prays that the judgment of the Supreme Court of Louisiana be affirmed.

Respectfully submitted,

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APPENDIX

Labor Management Relations Act of 1947

Section 7:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 158 (a) (3) of this title. 61 Stat. 140, 29 U.S.C., Section 157.

Section 8 (a) (1):

(a) It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise in the rights guaranteed in section 157 of this title. 61 Stat. 140, 29 U. S. C., Section 158 (a) (1).

Section 8 (a) (3):

(a) It shall be an unfair labor practice for an employer—

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this subchapter, or in any other statute of the United States, shall preclude an

employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159 (a) of this title, in the appropriate collective bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 159 (f), (g), (h) of this title, and (ii) unless following an election held as provided in section 159 (e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement. Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership. 61 Stat. 140; 65 Stat. 601, 29 U.S.C., Section 158 (a) (3).

Section 8 (a) (5):

(a) It shall be an unfair labor practice for an employer—

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title. 61 Stat. 140, 65 Stat. 601, 29 U.S.C., Section 158 (a) (5).

Section 8 (b):

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling. 61 Stat. 143, 65 Stat. 601, 29 U.S.C., Section 159 (c).

Section 9 (f), (g) and (h):

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000.00 and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor; and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by

paragraph (1) hereof to be filed with the Secretary of Labor. 61 Stat. 143, 65 Stat. 601, 29 U.S.C., Section 159 (f).

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, and no complaint shall issue under section 160 of this title with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection. 61 Stat. 143, 65 Stat. 601, 29 U.S.C., Section 159 (g).

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a

member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of sections 286, 287, 1001, 1022 and 1023 of title 18 shall be applicable in respect to such affidavits. 61 Stat. 143, 65 Stat. 601, 29 U.S.C., 159 (h).

Section 10 (b) (Excerpt):

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. 61 Stat. 146, 62 Stat. 991, 29 U.S.C., Section 160 (b).

Section 303:

Sec. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling,

transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefore in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit. 61 Stat. 158, 29 U.S.C., 187.

SUPREME COURT, U.S.
FILED
JAN 4 1956
HAROLD B. WILLEY, Clerk

No. 227

In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED MINE WORKERS OF AMERICA, ET AL.,
PETITIONERS

v.

ARKANSAS OAK FLOORING COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

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CITATIONS

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resentative of its employees. The plaintiff's refusal to recognize the Union was, therefore, not in violation of any obligation imposed by law, and the picketing in furtherance of this unlawful objective was the employment of economic pressure illegally for the purpose of causing the employer irreparable injury for which it has no adequate administrative or legal remedy—injurious conduct which the state court has jurisdiction to relieve. . . .

SUMMARY OF ARGUMENT

A. A union's noncompliance with the filing requirements of Sections 9 (f), (g), and (h) of the National Labor Relations Act disables it from invoking the processes of the National Labor Relations Board. As the relevant decisions hold, noncompliance does not alter the substantive requirements of the Act but denies the union standing to utilize Board facilities. In general, the Act regulates the labor relations between an employer and a noncomplying union no less than it does between employers and other labor organizations. If a noncomplying union engages in unfair labor practices violative of Section 8 (b) of the Act, it may be subjected to a Board remedial order. Moreover, the Board and the courts of appeals have held that it is not unlawful for an employer, voluntarily, to grant recognition to a noncomplying union, nor does it expressly limit the employer's bargaining obligation to unions which have satisfied the statutory filing requirements.

Even though a union may not be in compliance with Sections 9 (f), (g), and (h) when its request to bargain is made, this does not excuse the employer's obligation to bargain if the union in fact represents a majority of the employees; upon compliance, the cases hold, the union may in appropriate circumstances invoke the Board's processes to remedy the employer's prior refusal to discharge that obligation.

The Board and the courts have also held that the rights guaranteed to employees in Section 7 of the Act—"to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection"—are not necessarily qualified by the filing requirements. A union which fails to comply cannot obtain the help of the Board in establishing itself with an employer but noncompliance does not affect whatever rights it and its adherents may have under the Act to use traditional economic weapons for the purpose of gaining recognition. The contrary conclusion of the court below—that the effect of noncompliance is to make it unlawful for a union to resort to traditional economic weapons in support of its demand for recognition and for the employer to recognize the union—apparently rests on the erroneous premise that, absent a Board certification, an employer cannot legally recognize a union

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

OPINIONS BELOW

The trial court issued no written opinion; its judgments granting preliminary and permanent injunctions are set forth at R. 17, 65. The opinion of the Supreme Court of Louisiana, set forth at R. 69–85, is reported at 227 La. 1109, 81 So. 2d 413.

JURISDICTION

The opinion, judgment and decree of the Supreme Court of Louisiana was entered April 25,

1955 (R. 69), and a petition for rehearing was denied May 31, 1955 (R. 101). The petition for certiorari was filed July 12, 1955, and granted October 17, 1955 (R. 101). 350 U. S. 860.[1] The jurisdiction of this Court rests upon 28 U. S. C. 1257 (3).

QUESTION PRESENTED

The National Labor Relations Board's interest in this case is limited to a single question, namely, whether peaceful picketing by employees and their union of the premises of an employer subject to the National Labor Relations Act, for the purpose of obtaining recognition for the union which has membership cards from a majority of the employees, may be enjoined by a state court where the union, because it has not filed the financial data and the non-Communist affidavits required by Sections 9 (f), (g) and (h) of the Act, is not entitled to use the procedures of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are set forth in the Appendix, pp. 29–36, *infra*.

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[1] In granting certiorari, this Court invited the Solicitor General to file a brief setting forth the views of the National Labor Relations Board (R. 101). 350 U. S. 860.

STATEMENT

A. THE EVENTS LEADING UP TO THE INSTANT SUIT

Respondent, whose principal offices are in Pine Bluff, Arkansas, operates a sawmill and flooring plant at Alexandria, Louisiana, where it is engaged in the manufacture of lumber and oak flooring. It is admittedly engaged in interstate commerce (R. 24–27, 41–42, 69), and thus subject to the National Labor Relations Act.[2]

Toward the end of 1953, District 50 of the United Mine Workers started an organizational drive among the employees at respondent's Alexandria plant (R. 47–50, 70). By February 1954, about 174 of the plant's 225 employees had signed membership cards authorizing the union to represent them for purposes of collective bargaining (R. 16–17, 22, 31, 36, 51).[3] Moreover, the em-

[2] The record shows that at least 20 percent of the raw materials used by the Alexandria plant come from, and that about 90 percent of its finished product are delivered, out-of-state: also, the Alexandria plant is under the direction of the company's offices in Pine Bluff, Arkansas (R. 25, 38, 58), and is part of a multi-state enterprise. In addition, a report on the Company obtained from Dun & Bradstreet shows that, for the year ending December 31, 1954, its total net sales were approximately $6,000,000 (see also R. 43). In these circumstances, it seems clear that the company's business would satisfy the Board's current standards for the assertion of its jurisdiction. See *Jonesboro Grain Drying Cooperative*, 110 NLRB 481.

[3] Subsequently, the union obtained 5 more cards, making a total of 179. Union organizer Ledbetter testified, without contradiction, that all the signatures on the cards were those of employees at the plant (R. 55).

ployees who joined the union had in effect set up a local within the plant, electing officers and stewards (R. 30, 50).

About February 23, the union employees met after working hours and unanimously authorized James Ledbetter, the District 50 organizer, to request recognition from the Company (R. 30, 52). The next day, Ledbetter presented his credentials to Assistant Plant Superintendent Fowler, told him that the union represented a majority of the employees, and requested recognition as the employees' bargaining representative. Fowler replied that since the union was not "recognized" by the National Labor Relations Board he would not recognize it. (R. 31, 53–54, 58–59, 70.) Ledbetter reported back to the employees, who voted to strike for recognition on March 1, 1954 (R. 32–33, 54, 56–57).

On that date, a peaceful picket line of employees was set up in front of respondent's plant. Two pickets at a time paraded with signs stating: "This plant is on strike"; "We want recognition, District 50, UMWA." (R. 29, 32, 55.)

B. THE INSTANT SUIT

On March 2, 1954, respondent filed the instant suit for injunctive relief in a Louisiana trial court, naming as defendants the United Mine Workers, organizer Ledbetter, and 11 of the striking employees (R. 2–7, 28–29). The suit rested on the following alternate theories: (1) the pur-

pose of the picketing was to force the Company to recognize a union not selected by the employees, which would interfere with employee rights contrary to Louisiana law (R. 4–5, pars. 9–10); or (2) if the union represented a majority, the picketing was an unlawful interference with the Company's business because the union, due to its noncompliance with the filing requirements of the national Act, could not be recognized as a bargaining agent (R. 4, par. 8). Upon the filing of the suit, the court issued a temporary restraining order, enjoining all of the defendants from picketing respondent's plant (R. 7–8).

After hearings, the trial court, on March 25, 1954, converted the restraining order into a preliminary injunction (R. 17–18), and then, on June 24, 1954, into a permanent injunction (R. 65–66). The defendants had contested this action on the ground, *inter alia,* that the state court lacked jurisdiction because the relief requested would either remedy an unfair labor practice under the national Act or interfere with activity protected thereby (R. 10, 13, 63–64). Upon the entry of the injunction, they appealed both the preliminary and permanent decrees to the Supreme Court of Louisiana (R. 18, 66–68). On April 25, 1955, that court entered a decision sustaining the lower court (R. 69–83).

The Supreme Court of Louisiana found that "the picketing was engaged in for the sole pur-

pose of compelling the employer to recognize as the legally constituted agent of its employees a union that has no legal status before the National Labor Relations Board" because of its noncompliance with Sections 9 (f), (g), and (h) of the National Labor Relations Act, as amended. "This," the court stated, "is clearly not an act denounced as an unfair labor practice by the amendment of 1947." (R. 73–74.) On this basis, the court distinguished *Garner* v. *Teamsters Union,* 346 U. S. 485, pointing out that the activity sought to be restrained there "was peaceful stranger picketing for the purpose of coercing the employer to compel his employees to join a union—an activity, as demonstrated in the opinion, specifically denounced as an unfair labor practice in the Act" (R. 73).

The court then rejected the union's contention that, despite its noncompliance with Sections 9 (f), (g), and (h), the picketing for recognition was protected by the national Act. The court reasoned as follows (R. 80):

> It necessarily follows that inasmuch as the Union in the instant case has . . . failed and refused to comply with the provisions of Sections 9 (f), (g) and (h) . . . the Board is without jurisdiction to entertain any question with respect to its protestations of majority representation and/or unfair labor practices, for it is not only ineligible for certification, but cannot compel the employer to recognize it as the rep-

even though it may have majority status. But the union's majority status may be established by membership cards, without a Board election. The absence of a Board certification does not affect the union's right to persuade the employer voluntarily to accept its card proof of majority status and recognize and bargain with it. Nor does the absence of certification affect the legitimacy of the union's drive for recognition. It affects only the union's right to invoke Board sanctions in support of its effort to obtain recognition.

B. The Union's compliance or lack of compliance with the filing requirements is therefore irrelevant to the question of the state court's power to enjoin the picketing in the instant case. This question turns, as in prior cases before this Court, on whether the conduct is comprehensively covered by the national Act, either as an unfair labor practice, as conduct affirmatively protected under Section 7, or as activity deliberately left to the free play of economic forces, so that imposition of the state's remedy impairs or conflicts with the federal regulatory scheme. The instant injunction does create such a conflict.

If the union had majority status, the picketing by the employees in support of its demand for recognition constitutes, in the Board's view, activity within the protection of Section 7 of the Act. State restraint upon such activity is clearly barred by the Act, for a state may not prohibit

the exercise of rights which the federal Act protects.

Assuming, however, that the union did not have majority status, the picketing, as we read this Court's decisions, would nonetheless be closed to state regulation. Congress, as this Court has pointed out, has given detailed consideration to the problem of peaceful picketing for recognition or organization purposes by, or on behalf of, a union representing none or a minority of the employees. It proscribed such activity only when it entailed the form and objectives specified in Section 8 (b). In these circumstances Congress may be deemed to have preempted control over the activity in its entirety, whether it be viewed as an unfair labor practice under the Act or as activity within the protection of Section 7 or neither.

ARGUMENT

THE NATIONAL LABOR RELATIONS ACT PRECLUDES STATE COURT INJUNCTIVE RELIEF NOTWITHSTANDING THE UNION'S NONCOMPLIANCE WITH THE ACT'S FILING REQUIREMENTS

A. UNDER THE ACT, A UNION'S NONCOMPLIANCE WITH SECTIONS 9 (f), (g), AND (h) DISABLES IT FROM USING BOARD PROCESSES; IT DOES NOT MAKE RECOGNITION OF THAT UNION UNLAWFUL, OR OTHERWISE REMOVE ACTIVITY INVOLVING IT FROM THE FIELD REGULATED BY THE ACT

Sections 9 (f), (g) and (h) of the National Labor Relations Act provide that, if a labor organization and its affiliates fail to file operational and financial statements with the Secretary

of Labor and to furnish certain financial information to their members, and if their officers fail to file non-Communist affidavits, the following consequences follow: (1) the National Labor Relations Board may not investigate a question concerning representation raised by the labor organization; (2) it may not issue a complaint pursuant to a charge filed by the labor organization; and (3) the labor organization may not enter into a valid union-shop agreement. By thus closing the Board's processes to noncomplying unions, while leaving them open to unions in compliance, noncomplying unions incur serious disadvantages. If the employer with whom the noncomplying union seeks to negotiate engages in unfair labor practices, the union may not have them redressed by the Board, nor may it have its status as exclusive representative verified by a Board certification.[4] The inability to obtain a Board certification, in turn, deprives the noncomplying union of the right to engage in a secondary boycott for purposes of forcing recognition (Section 8 (b) (4) (B)), or a strike to force the assignment

[4] This is so irrespective of whether the noncomplying union itself files the representation petition, it is filed by the employer, or the petition has been filed by a complying union and the noncomplying union thereafter intervenes in the proceeding. See *Herman Loewenstein, Inc.*, 75 NLRB 377; *Sigmund Gohn Mfg. Co., Inc.*, 75 NLRB 177, 180, n. 2; *National Maritime Union* v. *Herzog*, 78 F. Supp. 146, 156 (D. D. C., 3-judge court), affirmed, 334 U. S. 854; *Fay* v. *Douds*, 172 F. 2d 720, 724–726 (C. A. 2).

of work which it might otherwise do if the employer were "failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work" (Section 8 (b) (4) (D)), and also deprives it of the protection which a certification would give it against a primary strike for recognition by a rival union (Section 8 (b) (4) (C)). See *American Communications Association* v. *Douds*, 339 U. S. 382, 390, n. 6.

Generally, however, the Act regulates labor relations between an employer and a noncomplying union no less than between employers and other labor organizations. If a noncomplying union engages in conduct violative of Section 8 (b), the provision defining unfair labor practices on the part of a labor organization or its agents, a Board remedial order may issue against it.[5] Moreover, the Board and the courts of appeals have held that it is not unlawful under the Act for an employer, voluntarily, to grant recognition to a noncomplying union, nor does it expressly limit the employer's bargaining obligation to unions which have complied with Sections 9 (f), (g) and (h). Thus, Section 8 (a) (5) declares it to be an unfair

[5] See *Chicago Typographical Union No. 16*, 86 NLRB 1041, 1048, remedying a refusal by a noncomplying union to bargain in good faith, as required by Section 8 (b) (3).

A noncomplying union may also be the subject of a decertification petition under Section 9 (c) (1) (A) (ii). *Harris Foundry & Machine Co.*, 76 NLRB 118.

labor practice for an employer "to refuse to bargain collectively with the representative of his employees, *subject to the provisions of section 9 (a)*" (emphasis added); the latter section defines representative as any person selected by a majority of the employees in an appropriate unit, without regard to compliance with the Act's filing requirements. Accordingly, it has been uniformly held—and the court below apparently overlooked these rulings—that, even though a union may not be in compliance with Sections 9 (f), (g) and (h) when its request to bargain is made, this does not excuse the employer's obligation to bargain if the union in fact represents a majority of the employees, and upon compliance with the statutory filing requirements the union may in appropriate circumstances invoke the Board's processes to remedy, as an unfair labor practice violative of Section 8 (a) (5) of the Act, the employer's prior refusal to discharge that obligation. "* * * Congress has not made compliance with the filing requirements of § 9 (f), (g) and (h) a condition precedent to the obligation of an employer under § 8 (a) (5) to bargain collectively with the chosen representative of the employees; such compliance is merely made a condition precedent to invoking the machinery of the Act for the investigation of a question concerning representation, or for the issuance of a complaint charging the commission

of unfair labor practices." *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131, 133–134 (C. A. 1), certiorari denied, 346 U. S. 887. *Accord: West Texas Utilities Co.* v. *National Labor Relations Board*, 184 F. 2d 233, 239 (C. A. D. C.), certiorari denied, 341 U. S. 939; *National Labor Relations Board* v. *Pecheur Lozenge Co.*, 209 F. 2d 393, 402–403 (C. A. 2), certiorari denied, 347 U. S. 953; *National Labor Relations Board* v. *Tennessee Egg Co.*, 201 F. 2d 370 (C. A. 6), reversing 199 F. 2d 95.

Similarly, the Board and courts of appeals have held that the rights guaranteed to employees in Section 7 of the Act—"to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection"—are not conditioned upon compliance with Sections 9 (f), (g) and (h). Thus, in *Leach d/b/a Brookville Glove Co.*, 114 NLRB No. 52 (October 6, 1955), 36 LRRM 1548, a situation very similar to that here, the Board held that a strike to compel recognition for the noncomplying United Mine Workers, which had obtained signed cards from a majority of the employees, was activity protected by Section 7 of the Act, and that consequently the employer's discharge of the strikers violated Section 8 (a) (3) of the Act. Reaffirming its position

in *Rubin Bros.*, 99 NLRB 610, 619, the Board reasoned as follows (36 LRRM at 1549):

> The Act does not proscribe bargaining with a noncomplying union; indeed, consonant with public policy, an employer may voluntarily recognize and deal with such a union. If Congress had intended the Act to have the effect urged by Respondents, it easily could have inserted an express provision in the statute to accomplish such result. This, Congress did not do. While the union in this case could not use the processes of this Board to obtain recognition as bargaining representative in view of its failure to comply with Section 9 (h) of the Act, we are not persuaded that Congress intended to withhold protection of the Act against discrimination from employees simply because they engaged in acts of self-help, otherwise legitimate, as members or adherents of a noncomplying labor organization. Hence we conclude that the strike in this case was a protected concerted activity. [Footnotes omitted.]

This decision is consistent with *National Labor Relations Board* v. *Pratt, Read & Co.*, 191 F. 2d 1006, 1008 (C. A. 2), holding violative of the Act the discharge of six employees for announcing their intention, shortly after the AFL had displaced the then noncomplying CIO as the representative, to campaign for restoration of the

CIO, "since the Act did not forbid voluntary recognition of the CIO as the bargaining agent."[6]

In sum, Sections 9 (f), (g), and (h) seek to achieve Congress' objectives—financial and operational responsibility and freedom from Communist or other subversive influences—by limited procedural measures which deny to the noncomplying union access to the Board's machinery for the investigation of questions concerning representation or for the remedying of unfair labor

[6] *Accord: National Labor Relations Board* v. *Electronics Equipment Co., Inc.*, 194 F. 2d 650, 651, n. 1 (C. A. 2). See also *National Labor Relations Board* v. *Coal Creek Coal Co.*, 204 F. 2d 579, 581 (C. A. 10), sustaining the Board's finding that the discharge of employee Golding, for campaigning on behalf of the noncomplying United Mine Workers, was violative of Section 8 (a) (3).

Ohio Ferro-Alloys Corp. v. *National Labor Relations Board*, 213 F. 2d 646 (C. A. 6), is distinguishable for the reasons noted by the Board in *Brookville Glove*, *supra*: "While the court there held that a strike for recognition by a union, which happened not to be in compliance with Section 9 (h) of the Act [UMW], was not a protected activity, the court based its holding on the ground, absent here, that the union struck to compel recognition *with notice that a rival union had filed a petition for certification with the Board*" (36 LRRM at 1549, n. 1). Nor does *Stewart-Warner Corp.* v. *National Labor Relations Board*, 194 F. 2d 207 (C. A. 4), relied on by the Supreme Court of Louisiana (R. 80–81), detract from our analysis in the text; although there is a portion of the Fourth Circuit's opinion which suggests that an employer is licensed to commit unfair labor practices against adherents of a noncomplying union (p. 210), the court went on to find it unnecessary to "pass upon" this question because the incidents involved occurred outside the limitations period imposed by Section 10 (b) (p. 211).

practices. The method adopted "was to stop the use of the Labor Board" (*National Labor Relations Board v. Daut*, 344 U. S. 375, 385) by those unions which failed to file the specified data and affidavits and "to encourage compliance with the filing requirements of the Act by creating a system of benefits and detriments" (*New Jersey Carpet Mills*, 92 NLRB 604, 610). A union which fails to comply cannot obtain the help of the Board in establishing itself with an employer, but such noncompliance does not, under the Act, deprive it and its adherents of the right to use traditional economic weapons for the purpose of gaining recognition. See *West Texas Utilities Co. v. National Labor Relations Board*, 184 F. 2d 233, 239 (C. A. D. C.), certiorari denied, 341 U. S. 939; also cases cited *supra*, p. 14.[7] To use a common but revealing expression, the Act's filing provisions may give the employer a shield against the use by the union of Board remedies, but they do not give him a sword with which to strike down the union or its otherwise lawful activities.

The contrary conclusion of the Supreme Court of Louisiana—that the effect of noncompliance

[7] See also, Report of the Joint Committee on Labor-Management Relations, Committee Print No. 986, Part 3, 80th Cong., 2nd Sess., 71: "Present law in no way limits the primary strike for recognition except in the face of another union's certification." *Accord:* S. Rep. No. 105, 80th Cong., 1st Sess. 22; H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 43.

under the Act, is to make it unlawful for a union to resort to traditional economic weapons in support of its demand for recognition and for the employer to recognize the union—apparently rests on an erroneous premise. The court appears to assume that an employer cannot legally recognize a union that has not verified its majority status in a Board election and received a Board certification; since a noncomplying union, not being eligible to use Board processes, cannot obtain a certification (see fn. 4, *supra*), it follows, in the court's view, that such a union could not be legally recognized and hence picketing to compel this objective is necessarily illegal pressure (R. 74–80). However, although an employer may not lawfully recognize as exclusive bargaining agent a union which does not represent a majority, it is well settled that a Board election is not the only method by which an employer may satisfy himself as to the union's majority status.[*] Thus, here, the membership cards (signed by a majority of the employees) possessed by the union would have permitted the Company, as the Board noted in *Brookville Glove*, *supra*, p. 14 (36 LRRM at 1549, n. 4), to grant

[*] See *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U. S. 318, 338–339; *Lebanon Steel Foundry* v. *National Labor Relations Board*, 130 F. 2d 404 (C. A. D. C.), certiorari denied, 317 U. S. 659; *National Labor Relations Board* v. *Kobritz*, 193 F. 2d 8, 14 (C. A. 1); *National Labor Relations Board* v. *Knickerbocker Plastic Co.*, 218 F. 2d 917, 921–922 (C. A. 9).

recognition to the union without committing an unfair labor practice. In these circumstances, the fact that the union's majority was not established in a Board election, though it may not, in certain situations, entitle the union to a Board order requiring the employer to bargain with the union, cannot affect the union's right to persuade the employer voluntarily to accept its card proof of a majority and recognize and bargain with it. In short, contrary to the court below, the union's

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[2] It has been generally held that, in the case of a union whose majority claim is not based on a certification, an employer may lawfully refuse to bargain with it, or condition recognition on a Board election, if he challenges the union's majority status in good faith. Conversely, where the employer's assertion of doubt regarding the union's majority status is not made in good faith, the employer's refusal to bargain will be held to be a violation of Section 8 (a) (5). See Nineteenth Annual Report of the National Labor Relations Board (G. P. O. 1955) p. 96; *Joy Silk Mills, Inc.* v. *National Labor Relations Board*, 185 F. 2d 732, 741-742 (C. A. D. C.), certiorari denied, 341 U. S. 914.

But respondent errs in concluding (Br. in Opposition to Petition for Certiorari, 12-13) that an employer who thus initiates a Board test of the complying union's majority status thereby curtails its economic weapons, leaving it with less power than a noncomplying union. It is not at all clear that the Act would preclude a complying union from picketing while the election petition is pending, or that it would have to discontinue the picketing should it lose the election. See Report of the Joint Committee on Labor-Management Relations, Committee Print No. 986, Part 3, 80th Cong., 2nd Sess., 70-71; *Meat Cutters* v. *Johnson*, 36 LRRM 2511 (Supreme Court of Kansas, July 13, 1955); *Douds* v. *Local 30, Bakery, &c. Workers International Union, AFL*, 224 F. 2d 49 (C. A. 2).

inability to get certified does not affect the legitimacy of its drive for recognition, but concerns only the question of whether the effort may be aided by Board sanctions.

B. THE ACTIVITY HERE IS THEREFORE GOVERNED BY THE SAME PRINCIPLES AS WOULD BE APPLICABLE WERE THE UNION IN COMPLIANCE WITH SECTIONS 9 (f), (g), AND (h), AND UNDER THOSE PRINCIPLES THE STATE COURT WAS BARRED FROM ACTING

In the light of the foregoing considerations, the union's compliance or lack of compliance with the Act's filing requirements is irrelevant to the question of the state court's power to enjoin the picketing here. This question turns, as in the prior cases before this Court,[10] on whether the conduct is comprehensively covered by the Act—either as an unfair labor practice, as conduct affirmatively protected under Section 7, or as activity deliberately left to the free play of economic forces—so that imposition of the state's remedy impairs or conflicts with the regulatory scheme fashioned by Congress. As we read the decisions of this Court, the instant injunction does create such a conflict and hence is barred by the Act.

Assuming the validity of the membership cards possessed by the union, the strike and the attendant picketing were for the purpose of secur-

[10] E. g., *Garner* v. *Teamsters Union*, 346 U. S. 485; *Weber* v. *Anheuser-Busch*, 348 U. S. 468; *Automobile Workers* v. *O'Brien*, 339 U. S. 454; *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383.

ing recognition for a union representing a majority of the employees. Such activity, as the Board specifically held in *Brookville Glove* (pp. 14–15, *supra*), is affirmatively protected by Section 7 of the Act.[11] A state restraint upon such activity would thus clearly be barred by the Act, for, as emphasized in *Weber* v. *Anheuser-Busch*, 348 U. S. 468, 474, "a State may not prohibit the exercise of rights which the federal Acts protect."

[11] It is immaterial that *Brookville Glove* only involved the employees themselves (*i. e.*, employees striking for recognition of a noncomplying union were discharged), while here the injunction, in addition to restraining certain of the striking employees, also covered the union and its organizer (pp. 4–5, *supra*). The inclusion of the union does not make the restraints on the employees themselves any less unlawful. Moreover, where employees have designated a union as bargaining agent, they delegate to the agent power to direct many of their concerted activities, including the calling of strikes. Accordingly, imposing a limitation on the union's power to call a strike for recognition is as much a limitation on employee rights as the restraint imposed on the employees themselves. No different conclusion is required by such cases as *National Labor Relations Board* v. *Augusta Chemical Co.*, 187 F. 2d 63 (C. A. 5), and *National Labor Relations Board* v. *Clausen*, 188 F. 2d 439 (C. A. 3), certiorari denied, 342 U. S. 868, which hold that the rights of individual employees are distinct from those of the union in the sense that an employee belonging to or supporting a noncomplying union may obtain Board redress of his own discriminatory discharge, notwithstanding that the union itself could not have secured that remedy on his behalf. These cases merely show that the union and the employee each has a separate right to *remedy* an invasion of the employee's Section 7 rights; this is not inconsistent with the proposition that employee rights may be *abridged* though only the union is literally subject to the restraint. *Hill* v. *Florida*, 325 U. S. 538.

Indeed, by in effect limiting the Company's employees in their choice of a bargaining agent more narrowly than does the Act, *i. e.*, restricting them to an agent which has complied with Sections 9 (f), (g) and (h) of the Act, the state action here is very similar to the Florida requirements, invalidated in *Hill* v. *Florida*, 325 U. S. 538, that the union file certain organizational information and obtain a license as a condition of operating as the representative of employees in the state.

Moreover, even if it be assumed, as the Company suggests, that the cards may not be authentic, so that the strike and the picketing are to obtain recognition for a minority union, the activity, we believe, would nonetheless be closed to state regulation under controlling decisions. Thus, as this Court has held, the legislative history of the Act indicates that Congress gave detailed consideration to the problem of peaceful picketing for recognition or organization purposes by, or on behalf of, a union representing none or a minority of the employees;[12] that it had

[12] See Hearings before the Senate Committee on Labor and Public Welfare on S. 55 and S. J. Res. 22, 80th Cong., 1st Sess., 282, 347–348, 552–553, 1858; Hearings before the House Committee on Education and Labor on Bills to Amend and Repeal the National Labor Relations Act, 80th Cong., 1st Sess., 228, 474–476, 492, 548–549, 704–705, 710–711, 723, 993, 1884–1885; 93 Cong. Rec. 1844, 1846, 1935, 3425, 3449, 3528, 3636, 3660, 3667, 3838, 4431, 4436, 4840, 4905, 7533.

before it proposals that would have outlawed such activity in its entirety;[13] but that the amendments finally adopted proscribed the activity only when it entailed the form and objectives specified in Section 8 (b).[14] In these circumstances, as we read the decisions of this Court (fn. 10, *supra*), Congress may be deemed to have preempted control over the activity in its entirety; those forms which fall short of the restrictions in Section 8 (b) are either encompassed within the affirmative protection of Section 7 or must be viewed as having been deliberately left by Congress to the free play of economic forces. "The detailed proscription of a procedure for restraint of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint." *Garner* v. *Teamsters Union*, 346 U. S. 485, 499. *Accord: Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, 397–398; *Automobile Workers* v. *O'Brien*, 339 U. S. 454, 456–457; *Aetna Freight Lines, Inc.* v. *Clayton, et al.* (C. A. 2, No. 23631, decided December 13, 1955).

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[13] See Sections 12 (a) (2) and (3) (c) of H. R. 3020, 80th Cong., 1st Sess., in 1 Leg. Hist. of the Labor-Management Relations Act, 1947, 78–79.

[14] See H. Conf. Report No. 510, 80th Cong., 1st Sess., 42–44, in 1 Leg. Hist. 546–548; Report of the Joint Committee on Labor-Management Relations, Committee Print No. 986, Part 3, 80th Cong., 2nd Sess., 70–71; *Meat Cutters* v. *Johnson*, 36 LRRM 2511, 2519–2520 (Supreme Court of Kansas, July 13, 1955.)

Accordingly, assuming *arguendo* that the activity here is on behalf of a minority union, it is unnecessary for purposes of this case to decide whether, on the particular facts presented, it would amount to an unfair labor practice under the Act,[15] or come within the affirmative protection of Section 7.[16] Even if neither is the case, it is nevertheless in the field which Congress has preempted and closed to concurrent state injunctive relief.

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[15] See *Perry Norvell Company*, 80 NLRB 225, 238–241; *Denver Bldg. & Const. Trades Council*, 90 NLRB 1768; *Medford Bldg. & Const. Trades Council*, 96 NLRB 165.

[16] The Board has not yet dealt with this question but cf. the following extract from the opinion of Chairman Farmer (dissenting on other grounds), in *Kearney & Trecker Corp.*, 113 NLRB No. 113, 36 LRRM 1422, 1425 (August 26, 1955):

"I agree that, with appropriate limitations, concerted activity is protected even where a minority is involved. The primary purpose of protecting minority concerted activity is to create that atmosphere of freedom of expression and action necessary for the democratic selection or rejection of a bargaining agent. Its function is to permit organizational activities within the democratic framework of the Statute. * * *

"* * * I would certainly uphold the rights of minorities to engage in activities looking toward securing majority status, including the right to engage in an organizational strike. I would also protect the right of a union which has not yet demonstrated its strength to mount a recognition strike. It is clear to me that Congress intended to preserve these rights."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the injunction issued by the Supreme Court of Louisiana in this case is invalid, and that the judgment below should be reversed.

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JANUARY 1956.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 65 Stat. 601, 602, 29 U. S. C. 151, *et seq.*), are as follows:

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section (8) (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him dur-

ing working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 9 (f), (g), (h). * * *: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initia-

tion fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order of certification of the Board determining the bargaining representative for employees performing such work: *Provided*, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

* * * * *

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining * * *

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new

members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bring-

ing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

* * * * *

LIMITATIONS

SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

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MAY 16 1956

IN THE

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Petitioners,

v.

ARKANSAS OAK FLOORING COMPANY,
Respondent.

On Writ of Certiorari to the Supreme Court of the State of Louisiana

RESPONDENT'S PETITION FOR REHEARING

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RESPONDENT'S PETITION FOR REHEARING

Respondent is asking for rehearing in this case because it believes that the Court's opinion of April 23, 1956, is based upon a serious misconception of the rules of decision of the National Labor Relations Board, and hence the judgment, if permitted to stand, would defeat a major purpose of the Taft-Hartley Act by granting unions refusing to comply with the filing requirements greater protection in their organizing activities than is accorded unions which have submitted the required financial reports and Communist disclaimers.[1]

We are aware that the Court is justifiably reluctant to entertain petitions for rehearing filed by losing litigants in

[1] Sections 9(f), (g) and (h).

a case of first impression. We earnestly submit, however, that an exception should be made in this instance, because the erroneous premise upon which the decision turned was founded upon a brief *amicus curiae* filed in behalf of the National Labor Relations Board, which neglected—unintentionally, no doubt—to mention certain Board policies and decisions, which if drawn to the attention of the Court would have cast an entirely different light upon the principal issue.

The issue posed in this Court was whether the highest court in Louisiana was in error in holding that the Taft-Hartley Act did not deprive state courts of jurisdiction to grant injunctive relief against recognition picketing by a labor organization whose non-compliance with the filing provision of the Federal statute prevented it from proving its asserted right to represent a majority of the employees, either in an election proceeding, or in an unfair labor practice case before the agency which this Court repeatedly has said has exclusive jurisdiction to determine such an issue.[2]

In reversing the holding of the Supreme Court of Louisiana, this Court expressly rested its judgment upon the premise that the picketing union represented a majority of the workers, and that there was no *bona fide* dispute as to this issue. From this premise, the Court reasoned that the employer was under an obligation to bargain with the union under the substantive provisions of the Federal law. Consequently, this Court concluded the injunction was in derogation of the implicit right of a majority union to bring

[2] This Court first noted the exclusive character of the Board's jurisdiction in *Meyers* v. *Bethlehem Shipbuilding Corporation*, 303 U.S. 41 and shortly thereafter in *Re National Labor Relations Board*, 304 U.S. 486, and in *American Federation of Labor* v. *National Labor Relations Board*, 308 U.S. 401. In *Re National Labor Relations Board, supra*, at Page 493, after noting that the Board had the sole jurisdiction to issue final orders under the Act, this Court asserted that the courts, lacking jurisdiction, "must refrain from any adjudication of rights in connection therewith," except under Section 10 of the Act, which provides for court review of such final orders as the Board may issue.

economic pressure to enforce this obligation, taking the view that the filing requirements were simply intended to deprive recalcitrant labor organizations representing the majority of administrative relief but not self help. The Court brushed aside the argument that such a view gave advantages to non complying unions by stating that, under Board decisions, non complying unions were not immune from unfair labor practice orders and could be the subject of decertification proceedings.

If the factual assumptions of the Court were correct, there could be little quarrel with this reasoning, except, of course, upon such broader issues of policy as Mr. Justice Frankfurter adverted to in his dissent. But we submit that its assumptions were at fault in two major particulars.

1. In the absence of an election, even the Board could not certify that a majority of the employees has selected any union as their representative for the purposes of collective bargaining under Section 9(a). Thus the Court erred, not only in deciding a question which it has previously held the courts lack jurisdiction to determine, but in deciding it on evidence which the Taft-Hartley Act precludes the Board from relying upon in representation cases.[1]

While the Board has issued orders to bargain in proceedings under Section 8(a)(5) of the Act without an election where the majority status of the union is evidenced by designation cards and where the union is in compliance with Sections 9(f), (g) and (h), it has done so only where the employer's professed doubt as to the majority status of the union is found not to be a *bona fide* doubt. But in no case has the Board found that the employers doubt as to the union's majority status was not *bona fide* simply because the

[1] Section 9(c), of the Wagner Act permitted the Board to certify a union as the majority representative after it had determined the wishes of the employees by means of a secret ballot or by "any other suitable method." The Taft-Hartley Act provides that no certification under Section 9(c) of the Act can be issued by the Board except after an election by secret ballot.

union had designation cards from a majority of the employees.[4]

2. Neither the employer[5] nor any employees[6] could have filed a petition a petition to test the Union's claim of majority status under the circumstances of this case.

Thus, this Court conferred an advantage on the non-complying union in this case which a complying union could not have enjoyed.

A complying union could not have relied on its designation cards to establish itself as the majority representative

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[4] See *Felton Oil Company*, 78 NLRB 1033; *Whitneys*, 81 NLRB 75; *Continental Southern Corporation*, 83 NLRB 668, 669; *J. P. O'Neil Lumber Company*, 94 NLRB 1299; *Andrews Industries, Inc.*, 105 NLRB 946. See also *Philadelphia Electric Company*, 95 NLRB 71, where the Board held that a bona fide question concerning representation existed even though *all* employees were members of the union under a compulsory union membership clause of a contract executed after the union had secured authorization from the employees for such a contract under the so-called union shop authorization election provisions then contained in the Act. As to the Board's policy in unfair labor practice cases arising under Section 8(a)(5) of the Act, see *Roanoke Public Warehouse*, 72 NLRB 1281, and *United States Gypsum Company*, 90 NLRB 964. The representation cases cited in this note make it clear that the Board will not refuse to process petitions filed by employers or employees simply because the union claiming a majority possesses designation cards evidencing such majority. In the unfair labor practice cases, the Board has not relied on designation cards to prove a union's majority, except where the employer failed to file a petition under Section 9(c)(1)(B) or where, while professing to doubt the union's majority status, the employer engaged in other unfair labor practices prohibited by Section 8 of the Act.

[5] See *Herman Loewenstein, Inc.*, 75 NLRB 377, and the 13th Annual Report of the Board (1948) which states (Page 22, Footnote 14), "this ruling would require the dismissal of the petition [filed by an employer] if only one union is involved, and it is not in compliance."

[6] The Board will process a decertification petition filed by employees under Section 9(c)(1)(A) of the Act only where the Union "has been certified or is being currently recognized by their employer as the bargaining representative." See *Queen City Warehouses, Inc.*, 77 NLRB 268 and *Hackathorn & Myers*, 90 NLRB 75. In the instant case, the employer was not, of course, "currently recognizing" the union, nor had it been "certified." In *Harris-Foundry and Machinery Company*, 76 NLRB 118, the only decertification case cited by the Board in its brief to this Court, the Board directed an election upon a petition filed by employees where the union was not in compliance, because the union had previously been certified by the Board after an election held under Section 9(c) of the Wagner Act.

under Section 9(a) or Section 8(a)(5) of the Act and would therefore have been forced to an election. If an election proved, as has been frequently the case, that designation cards did not reflect the true wishes of the employees and that therefore the union was in fact a minority union, the injunction issued by the state court would have been valid.[7] Congress added the requirements of Section 9(f), (g) and (h) of the Act, obviously, because it believed that some unions were communist dominated or were reluctant to inform their members concerning financial and other affairs of their union. Such a union would, for obvious reasons, prefer to establish its majority status by means of designation cards, rather than to establish it by means of a secret ballot election conducted by the Board. The Court's decision of April 23, 1956, will, if permitted to stand, actually constitute an advantage to such a union.

Perhaps even more important, however, the Court's opinion deprives both the employees and the employer of any protection to their rights, which Congress provided in the Taft-Hartley Act, to test by an election a union's claim to majority status. Here the union, by its non-compliance, has made these rights unavailable to the employer, and this Court's opinion has closed the door to whatever protection the state courts could otherwise provide. Thus, rights granted employers by the Taft-Hartley Act are erased; safeguards designed to insure representation by a union of the employees' choice are limited; and non-complying

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[7] The Board, in its brief *amicus curiae* (Page 24), asserts that even if the picketing and strike here were activities of a minority union, the state injunctive relief would have been improper. But, if as the Board found in *Perry Norvell Company*, 80 NLRB 225, 238-241, picketing by a minority union is not a union unfair labor practice proscribed by the Act, and if such picketing is not protected by the Act, as the courts have found in *Hoover Company* v. *National Labor Relations Board*, 191 F. 2d 380 (CCA-6); and in *Ohio Ferro-Alloys Corporation* v. *National Labor Relations Board*, 213 F. 2d 546 (CCA-6), the union's activity here was neither forbidden by Federal statute nor was it legalized and approved thereby. Under these circumstances, there was no basis for denying to the state the power to control the activity. See *International Union* v. *Wisconsin Employment Relations Board*, 336 U.S. 245.

unions, which [illegible] representative status is now exempted from Federal administrative determination, obtain immunity from state regulation, although such unions presumably require regulation more than others.

CONCLUSION

For the reasons set forth above, and in respondent's brief, it is respectfully urged that rehearing be granted and that, upon such rehearing, the decision of the Supreme Court of Louisiana be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

We hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and is restricted to grounds specified in Rule 33 of the Rules of this Court.

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JOSEPH C. WELLS
Counsel for Respondent

PROOF OF SERVICE

I hereby certify that I have deposited in the United States Mail, with sufficient air mail postage thereon insured delivery, copies of the foregoing petition for rehearing addressed to all counsel for United Mine Workers of America, et al., petitioners, one copy being addressed to Honorable Crampton Harris, 1018-19 First National Bank Building, Birmingham 3, Alabama; one copy to Honorable James L. McCain, 818 Whitney Building, New Orleans, Louisiana; one copy to Honorable Yelverton Cowherd, 900 Fifteenth Street, N.W., Washington 5, D. C.; and one copy to Honorable Alfred D. Treherne, 900 Fifteenth Street, N.W., Washington 5, D. C., on this 18th day of May, 1956.

I further certify that I have placed in the United States Mail, three copies of the foregoing petition for rehearing, addressed to the Solicitor General, Department of Justice, Washington 25, D. C., with postage thereon fully prepaid to insure delivery, on this 18th day of May, 1956.

JOSEPH C. WELLS
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